SUPERVISORS OF ALBANY *v.* STANLEY.

Supreme Court of the United States. April 3, 1882.

1. STATUTE CONSTRUCTION—SEPARABLE PROVISIONS—VALIDITY.

In a statute which contains invalid or unconstitutional provisions, that which is unaffected by those provisions, or which can stand without them, must remain. If the valid and invalid are capable of separation, only the latter are to be disregarded.

2. STATE TAXATION—NATIONAL BANK SHARES—DEDUCTION OF DEBTS.

Where the federal statute (Rev. St. § 5219) permits a state to authorize all shares held in national banks by any person to be included in the valuation of his personal property and to be assessed at the place where the national bank is located, subject to the restriction "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individuals," and a state statute is passed in relation to taxation, requiring assessors to assess to each tax-payer his real estate at its value and his personal estate at its full value after deducting debts owed by him, and providing that if before the completion of the assessment he makes affidavit "that the value of the personal estate owned by him, after deducting his just debts and his property invested in the stock of any corporation liable to be taxed therefor, does not exceed a certain sum, to be specified in the affidavit, it shall be the duty of the board of assessors to value such real or personal estate, or both, as the case may be, at the sum specified in such affidavit, and no more," and a statute subsequently passed, relating to the taxation of bank shares, made no provision for deducting debts, *held,* that such statutes remain a valid rule of assessment for shareholders of national banks who have no debts to deduct; that the prior statute is not in conflict with the act of congress; and that the later statute is valid, except in that it does not authorize a deduction for debts of the shareholder, which, being a distinct and separable principle, will not invalidate the whole act.

3. SAME—ASSESSMENT—NOTICE OF DEBTS TO BE GIVEN.

Under such statutes the assessors were not without authority to assess national bank shares; and where no debts existed to be deducted the assessment was valid and the tax paid was a valid tax; but where there did exist such indebtedness which ought to be deducted, the assessment was voidable but not void, the assessors being authorized in such cases, until notified in some proper manner that the shareholder owed debts which he was entitled to have deducted.

BRADLEY, J., dissenting.

In error to the circuit court of the United States for the northern district of New York.

MILLER, J. This is a writ of error to the circuit court for the northern district of New York, in which Stanley, the defendant in error, recovered a judgment against plaintiffs in error for taxes exacted and paid under legal process on shares of the stock of the National Albany Exchange Bank. A large number of the shareholders of the bank who had paid this tax made an assignment of [83] their claims to Stanley, and he recovered a judgment in the action for the sum of $61,991.20, with interest and costs. The ground of this recovery was that the statute of New York, under which the shares of the bank were assessed, was void, because it did not permit the shareholder to make deduction of the amount of his debts from the valuation of the shares of stock owned by him, in ascertaining the amount for which the shares should be taxed. The pleadings in the case set out the sums paid by the stockholders and their names, and their assignment to Stanley, the payment under compulsion of legal process, and a demand for the repayment on the Albany county authorities. The case was submitted to the court on a waiver of trial by jury, and on the findings of fact and conclusions of law thereon by the court, judgment was rendered for plaintiffs. The facts found by the court are thus stated:

"*First.* That the allegations of the complaint in regard to the citizenship of the plaintiff, the citizenship

and powers and liabilities of the defendant, the organization and capital of the National Albany Exchange Bank, the ownership of the shares of capital stock of the National Albany Exchange Bank, the assessment of the stockholders in said bank, named in said complaint, by the board of assessors of the city of Albany, the names and residences of said stockholders, the collection of taxes from said stockholders, and the payment of the same to the county treasurer of the county of Albany, and the demand made by Chauncy P. Williams, before the commencement of this action of the treasurer of the county of Albany, are true as therein set forth.

"*Second.* That the amounts collected from the said stockholders and paid to the treasurer of the county of Albany, and the times when the said amounts were so paid to said treasurer, were as follows, to-wit: $907.90 paid August 11,1874; $127.84 paid August 11, 1874; $1,868.06 paid May 1, 1875; $1,409.33 paid May 27, 1876; $1,202.32 paid May 3, 1877; $1,336.60 paid April 17, 1878; $1,473.02 paid April 22, 1879; $11,604.75 paid May 1, 1875; $8,147.26 paid May 27, 1876; $7,822.34 paid May 3, 1877; $7,357.94 paid April 16, 1878; $6,243.20 paid April 21, 1879.

"*Third.* That the sums above named were not paid voluntarily by said stockholders, but were forcibly collected by the marshal of the city of Albany under a warrant issued to such marshal by the receiver of taxes of said city, pursuant to a warrant issued to said receiver of taxes by the board of supervisors of the county of Albany, by levying upon the property of the said stockholders respectively, as alleged in said complaint.

"*Fourth.* That the said assessments were made and said amounts collected and received by the treasurer of the county of Albany, as above stated, under color of an act of the legislature of the state of New York, entitled 'An act authorizing the taxation of the

stockholders of banks and surplus funds of savings banks,' passed April 23, 1866, being chapter 761 of the Laws of 1866, and not otherwise.

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"*Fifth.* That the allogations of the complaint with reference to the assignments by the respective stockholders of said bank of their claims against the county of Albany, by reason of the matters alleged in the said complaint, are true as set forth in said complaint, and that the plaintiff, at the time of the commencement of this action, was the holder and owner of all claims against the county of Albany, or against the defendant, arising out of the matters alleged and set forth in said complaint.

"*Sixth.* That the said act of the legislature of the state of New York, chapter 761 of the Laws of 1866, did not permit the deduction of debts owing by the owners of stock in banks or banking associations, in the assessment thereof for taxation, although such deduction of debts of the owner was, at the time of the assessments alleged in the said complaint, permitted and required by the laws of the state of New York to be made from the value of every kind of personal property and moneyed capital, other than bank stock, in assessing the same for the purpose of taxation.

"*Seventh.* That the allegations in the fourth count of said complaint, as to the presentation to the said board of assessors by said Chauncy P. Williams of the affidavit of his indebtedness, and the request by him for a reduction of his assessment on his bank stock, and the refusal of said board of assessors to make such reduction, and the application by said Williams to the supreme court of the state of New York for a writ of *mandamus,* and the subsequent legal proceedings thereon, including the decision of the supreme court of the United States, are true, as set forth in said fourth count."

It does not appear by this finding of the court that any shareholder, for whose payment of taxes this suit is brought, made affidavit or other application in regard to his indebtedness, that it might be deducted from his assessment, nor that any of these shareholders owed anything to be deducted from the assessed value of the shares held by them, except the seventh finding of facts in regard to C. P. Williams.

Unless, therefore, the other shareholders who paid the tax on the shares of their stock were entitled to recover back the sum paid without any evidence that they had made affidavit of the amount which they would be entitled to deduct from the assessment of their shares, if the same rule had been applied to assessment of bank shares as to other personal property, and without any evidence that they owed anything whatever to be deducted from any assessment of their personal property, including bank shares, the judgment in this case cannot be supported.

The judge who decided the case on the circuit found as a conclusion of law that the assessment of all shares of national banks was void because the statute of New York, under which the assessments were necessarily made, was void, as being in conflict with the act of congress on 85 that subject, and he declares, in an opinion delivered in the case of *National Albany Exchange Bank* v. *Hills*, in a chancery suit, that the assessments in this class of cases are absolutely void, the assessors having acted without any jurisdiction. If this view of the subject be sound—if the officers who assessed and collected this tax were utterly without authority to collect any tax whatever, or if there was no law by which in any case they could assess and collect tax on shares of national banks—then it is of no consequence to inquire of anything beyond the fact that plaintiff's assignors did pay such a tax under legal compulsion. On the other hand, if the law is for any purpose a valid law, and if it can be held to furnish the

rule of taxation as to any class of owners of national bank shares, then the *onus* is on plaintiff to show that his assignors are not of that class.

The question here to be decided arises under two statutes of the state of New York in regard to taxation. The first of these is the act of 1850, relating to the assessment and collection of taxes in the city of Albany. The sixth section of the act requires the board of assessors to prepare an assessment roll, in which there shall be set opposite the name of each tax-payer (1) all his real estate liable to taxation, and its value; (2) the full value of all his personal property after deducting the just debts owing by him. Section 9 of the act is as follows:

"If any person shall at any time before the assessors shall have completed their assessments make affidavit that the value of his real estate does not exceed a certain sum, to be specified in such affidavit, or that the value of the personal estate owned by him, after deducting his just debts, and his property invested in the stock of any corporation or association liable to be taxed therefor, does not exceed a certain sum, to be specified in the affidavit, it shall be the duty of the board of assessors to value such real or personal estate, or both, as the case may be, at the sum specified in such affidavit, and no more."

In 1866 the state enacted a law concerning the taxation of bank shares which was evidently intended to meet the requirements of the act of congress in relation to state taxation of the shares of national banks, and the provision of this statute related only to taxing stock-holders in banks, and to the capital invested in individual banks. The first section of this act reads as follows, and it contained no other provision for deductions as the basis of taxation, except what is found in this section:

"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 [86] 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 stockholders 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. And in making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested in which said shares are held, to the whole amount of the capital stock of said bank or banking association; and provided further, that nothing herein contained shall be held or construed to exempt from taxation the real estate held or owned by such bank or banking association; but the same shall be subject to state, county, municipal, and other taxation to the same extent and rate and in the same manner as other real estate is taxed."

In the case of *People* v. *Dolan,* 36 N. Y. 59, the question was whether, taking these two statutes together, an owner of shares of stock in a national bank was entitled to deduct from the assessed value of his shares the just debts owing by him. It was argued that into this act of 1866 for the taxation of bank shares there should enter, as part of it, the provision of the act of 1850 which allowed this deduction as to all personal property, and that nothing in the act of 1866 forbid this or was inconsistent with it. It was also insisted that unless the act of 1866 was so construed it would violate the act of congress which only permitted the shares of national banks to be taxed at the same rate

as other money capital of the citizens of the state. But the court of appeals overruled both propositions, and held that the true meaning of the act of 1866 was that no such deduction should be made, and that as thus construed it was not in conflict with the act of congress on that subject.

In the subsequent case of *Williams* v. *Weaver,* Williams, who was a shareholder in the National Albany Exchange Bank, made the affidavit required by section 9 of the act of 1850, and, presenting it to the board of assessors of the county, demanded a reduction in accordance with it from the valuation of his bank shares. On the refusal of the assessors to comply with this request a proceeding was commenced in the courts of the state, in which the court of appeals reaffirmed the principles of the case of *People* v. *Dolan.* That case coming into this court by writ of error, it was here held that while we were bound to accept the decision of the highest court of the state in construction of its own statute, the act of 1866 as thus construed was in that particular in conflict with the act of congress, because it 87 did tax shares of the national banks at a higher rate than other moneyed capital in the state. In that case, reported in 100 U. S. 539; S. C. 21 Alb. Law J. 210, there are no words which declare the act of 1866 to be void, but the careful language of the decision is that "in refusing to plaintiff the same deduction for debts due by him from his shares of national bank stock that it allows to others who have moneyed capital otherwise invested, it is in conflict with the act of congress."

Accepting, therefore, as we must the act of 1866 as construed by the court of appeals of New York as not authorizing any deduction for debts by a shareholder of a national bank, is it for that reason absolutely void? This cannot be true in its full sense, for there is no reason why it should not remain the law as to banks or banking associations organized under the laws of the

state, or as to private bankers, of which there no doubt exists a large number of both classes.

What is there to render it void as to a shareholder in a national bank who owes no debt which he can deduct from the assessed value of his shares? The denial of this right does not affect him. He pays the same amount of tax that he would if the law gave him the right of deduction. He would be in no better condition if the law expressly authorized him to make the deduction. What legal interest has he in a question which only affects others? Why should he invoke the protection of the act of congress in a case where he has no rights to protect? Are courts to sit and decide abstract questions of law in which the parties before the court show no interest, and which, if decided either way, affect no right of theirs?

It would seem that if the act remains a valid rule of assessment for shares of state banks and for individual bankers, it should also remain the rule for shareholders of national banks who have no debts to deduct, and who could not therefore deduct anything if the statute conformed to the requirements of the act of congress.

It is very difficult to conceive why the act of the legislature should be held void any further than when it affects some right conferred by the act of congress. If no such right exists, the delicate duty of declaring by this court that an act of state legislation is void is an assumption of authority uncalled for by the merits of the case, and unnecessary to the assertion of the rights of any party to the suit.

The general proposition must be conceded that in a statute which contains invalid or unconstitutional provisions, that which is unaffected by these provisions, or which can stand without them, must 88 remain. If the valid and invalid are capable of separation, only the latter are to be disregarded.

In the case of *Railroad Cos.* v. *Schutte,* 103 U. S. 118, decided at the last term, this point was pressed upon us with much earnestness, and its decision was necessary to the judgment of the court. "It is contended," said the court, "that as the provision of the act in respect to the execution and exchange of the state bonds is unconstitutional, the one in relation to the statutory lien on the property of the company is also void and must fall. We do not so understand the law." And yet this was a case in which the scheme of exchanging the bonds of the state for the bonds of the company, in order that the company might get the benefit of the better credit of the state, was accompanied by a mortgage created alone by the statute in favor of the state as her security, and the court, while holding that the exchange of bonds was void as being in conflict with the constitution of the state of Florida, held that the mortgage which secured the bonds of the company, and which was only a mortgage by operation of the same statute, was valid.

The language of this court in the two cases cited in the brief of *U. S.* v. *Reese,* 92 U. S. 214, and *Trade-mark Cases,* 100 U. S. 82, concedes the general principle that the whole of a statute is not necessarily void because a part of it may be so. Said the court in the latter case: "While it may be true that when one part of the statute is valid and constitutional and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable, so that each may stand alone, it is not within the judicial promise to give to the words used by congress a narrower meaning than they are manifestly intended to bear. * * *" The case of *U. S.* v. *Reese* also implies that there may be unconstitutional provisions which do not vitiate the whole statute or even a single section, because the argument is to show that in that case there could be no separation of the good from the bad. It is also to be observed that in both these

cases it was a statute creating and punishing offences criminally, which was to be construed in regard to the limited constitutional power of congress in criminal matters.

The case of *State Freight Tax,* 15 Wall. 232, arose out of a statute of Pennsylvania which attempted to impose a tax on commerce forbidden by the constitution of the United States. The act imposed a tax upon every ton of freight carried by every railroad company, steam-boat company, and canal company doing business within the state. The railroad company who contested the tax presented a [89] statement which separated the freight transported by them between points solery within the state and limited to such destination, and that which was received from or carried beyond those limits. This court held the latter to be void as a tax on interstate commerce, and did not declare the whole tax or the whole statute void. It said:

"It is not the purpose of the law but its effect which we are now considering. Nor is it at all material that the tax is levied upon all freight, as well that which is wholly internal as that embarked in interstate commerce. * * * The conclusion of the whole matter is that, in our opinion, the act of the legislature of Pennsylvania of August 25, 1864, so far as it applies to articles carried through the state or articles taken up in the state and carried out of it, or articles taken up without the state and brought into it, is unconstitutional and void."

The same language is repeated in *Erie Ry. Co.* v. *Pennsylvania,* 15 Wall. 282, decided at the same time, and both cases were remanded to the state court for further proceedings in conformity with the opinion, which could only mean to enforce the tax on transportation limited to the state and not on interstate commerce.

This is a clear case of distinguishing between the articles protected by the constitution of the United States and those which were not, though nothing in the language of the statute authorized any such distinction.

But in a review of the cases in this court on this subject, that of *Austin* v. *Aldermen of Boston,* 14 Allen, 357, will be found to most nearly resemble the one before us. It related to the same matter of invalidity of a statute of a state taxing shares of the national banks as being in conflict with the act of congress. That act said that such taxes might be assessed at the place where said bank was located and not elsewhere.

The act of the Massachusetts legislature directed the assessment and taxation of the shares at the place where the owner resided. The plaintiff in error, Austin, having contested the tax on his shares in the courts of the state unsuccessfully, brought the case here by writ of error. This court declined to enter upon the question of the validity of the Massachusetts statute, because the case did not show that Mr. Austin was taxed on his shares in any other place than Boston, the place where the bank was located.

The argument of counsel in the case before us is that any tax or a tax on any person on account of his bank shares is void because the whole of the New York statute is void. If the argument is sound it was equally applicable to Austin's case.

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The statute of Massachusetts, which made no limitation of taxation to the place where the bank was located, must be held void under any principle which would wholly invalidate the statute of New York, because it did not allow the deduction of the owner's indebtedness from his shares. And if the Massachusetts statute was utterly void as to national bank shares, then the tax on Mr. Austin's shares in

Boston was void, and he had a right to be protected against the unconstitutional statute. The court evidently went upon the principle that the statute was only void as against the act of congress in cases where some one was injured by the particular matter in which there was such conflict. The case seems to us directly in point. To the same effect are the cases of *People* v. *Bull,* 46 N. Y. 57; *Gordon* v. *Cornes,* 47 N. Y. 608; *Village of Middleton, Ex parte,* 82 N. Y. 196.

If we examine the statute before us on principle we shall find but little reason to hold it to be wholly void as regards bank shares. If the statute stood alone there is nothing in it in conflict with the act of congress. It is only when we look to the other statute, which prevents the deduction of debts from the entire value of personal property, that we discern the discrimination against bank shares. The act declares that bank shares shall be taxed according to their value, after deducting the real estate and other property on which the bank itself pay tax. This is eminently just. It provides for a mode of ascertaining their value, the officers who shall do it, and how the tax shall be collected. In all this the law is valid except that it does not authorize a deduction for debts of the shareholder. This is a distinct and separable principle. When the shareholder has no debts to deduct the law provides a mode of assessment for him which is not in conflict with the act of congress, and the law in that case can be held valid. Under the decision in *Austin* v. *Aldermen of Boston* it is valid as to him.

If he has debts to be deducted the case of *Williams* v. *Weaver* shows that in taking the steps which this court has held he may take, he can secure that deduction, and when secured the remainder of the law remains valid. In other words, in such a case so much of the law as conflicts with the act of congress in the given case in held invalid, and that part of the state law which is in accord with the act of congress is held

to be the measure of his liability. There is no difficulty here in drawing the line between those cases to which the statute does not apply and to those to which it does; between the cases in which it violates the act of congress and those in which it [91] does not. There is therefore no necessity of holding the statute void, as to all taxation of national bank shares, when the cases in which it is invalid can be readily ascertained on presentation of the facts.

It follows that the assessors were not without authority to assess national bank shares; that where no debts of the owners existed to be deducted the assessment was valid and the tax paid under it a valid tax; that in cases where there did exist such indebtedness, which ought to be deducted, the assessment was voidable but not void. The assessing officers acted within their authority in such cases until they were notified in some proper manner that the shareholder owned just debts which he was entitled to have deducted.

If they then proceeded in disregard of the act of congress the assessment was erroneous, and the case of *Williams* v. *Weaver* shows how that error could be corrected.

The case before us shows no error in any case but that of Mr. Williams, and in that case he has obtained the judicial decision of this court that the tax he paid was illegally exacted from him. Nor do the facts of his case raise the question whether, in a case where the debts of the shareholder do not equal the assessors' value of his shares, the tax is wholly erroneous, or only so much as represent the assessment of his indebtedness that should have been deducted, for his affidavit was that his debts equalled the value of his bank shares. Nor do the findings of fact raise the question whether, without making affidavit and demand on the assessors, a suit can be maintained to recover when such indebtedness actually

existed; for he did make affidavit and demand, and no other tax-payer has shown any such notice or demand, or that he had any indebtedness to be deducted. There is neither finding of fact nor averment in the pleadings on either point as to any other assignors of plaintiff than Mr. Williams. It results from these considerations that the judgment of the circuit court is reversed, and that on the finding of facts judgment should be rendered for plaintiff on the fourth count for the amount of the tax paid by Williams, with interest, and on all the other counts for defendants.

It is so ordered.

BRADLEY, J., *dissenting.* I dissent from the judgment of the court in all these cases for the reason that, in my opinion, the state laws authorizing the capital stock of national banks to be taxed without allowing any deduction for the debts of the stockholders, where such deduction is allowed in relation to other moneyed capital, are void *in*

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toto so far as relates to national banks. To hold the law valid except as to those who are actually indebted and actually claim the benefit of the deduction, and actually set it up in a suit brought by the bank for relief, is practically to render the condition of the act of congress nugatory, and to deprive the national banks and their stockholders of its protection. The tax, though laid on the stockholders, is required to be paid by the bank itself, which must pay without deduction unless the shareholders give the bank notice of the amount of their debts. This is a most ingenious expedient to avoid such deductions altogether. The probability that not one in ten of the shareholders will ever have notice of the assessment in time to make the claim, and the natural reluctance they would have (if they had notice) to lay the amount of their debts before a board of bank officers will effectually secure the state from claims for deduction. And that was no doubt the

object of the law. But this unequal operation of it, in its practical effect, might not be sufficient to render it void. It is void, in my judgment, because it makes no exception, but is general in its terms, subjecting to taxation the capital stock of national banks without the privilege of deducting debts. Denying to it operation and effect as to those who desire to claim the benefit of the deduction, and giving it effect as to all others, is to tear a portion of the law out by the roots. It is not like the case where a portion of a law which may be separated from the rest can be declared invalid without affecting the remainder of the law; nor like the case of a general law which the legislature has power to make, but from the operation of which some individuals may have a legal or constitutional exemption which they can plead in their defence; but it is wrong in from; wrong *in toto.* The legislature had no authority or power to make the capital of national banks taxable except in the same manner as other moneyed capital of the state. The practical iniquity of the law is seen in this, that it affects the value of all the stock, whoever holds it. As the law stands it acts as a prohibition against the purchase of the stock by those who owe debts, and they constitute a considerable portion of every community. It does not help the validity of the law for us to declare that it is *pro tanto* void, and in fact make a new law for the state. Its validity must be decided by its actual form and terms. If these cannot stand, the law is void.

NOTE. The cases affected by this decision are: *First Ward Bank* v. *Hughes,* 6 FED. REP. 737; *Albany City Nat. Bank* v. *Maher,* Id. 417; *First Nat. Bank of Utica* v. *Waters,* 7 FED. REP. 152; *First Nat. Bank of Chicago* v. *Farwell,* Id. 518; *Nat. Albany Exch. Bank* v. *Wells,* 18 Blatchf. 540; *Van Allen* v. *The Assessors,* 3 Wall. 573; 93 affirmed in *People* v. *Com'rs,* 4 Wall. 244; and see generally, on the subject of state taxation of national banks, *St. Louis Nat. Bank* v. *Papin,* 4 Dill.

29; *Bank of Omaha* v. *Douglas Co.* 3 Dill. 299; *First Nat. Bank* v. *Douglas Co.* Id. 330; *Union Nat. Bank* v. *Chicago,* 3 Biss. 82; *Collins* v. *Chicago,* 4 Biss. 472; *Nat. Bank* v. *Com.* 9 Wall. 353; *Lionberger* v. *Rouse,* Id. 468; *Tappan* v. *Merchants' Nat. Bank,* 19 Wall. 490; *Hepburn* v. *Schooldist.* 23 Wall. 480; *Waite* v. *Dowley,* 94 U. S. 527; *Adams* v. *Nashville,* 95 U. S. 19; *Pelton* v. *Nat. Bank,* 101 U. S. 146; *Merchants' Nat. Bank* v. *Cumming,* 17 Alb. L. J. 345; *City Nat. Bank* v. *Paducah,* 5 Cent. L. J. 347; *Bank of Commerce* v. *Tennessee,* 25 Alb. L. J. 188.—{ED.

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