There can be no doubt that a bill will lie to remove a cloud created on the title to land by a tax deed alleged to be void for fraud or irregularity, although the complainant set up his legal title only, if he be in possession. In the case at bar, although the bill alleges possession in the complainant, it seems to be that possession which the legal title draws to it. The important question in this case, therefore, is, will a bill lie to remove a cloud upon the title created by a tax deed, if the complainant be not in actual possession of the land, and if he relies on his legal title? As we have seen, the general rule requires that in such a case the complainant should allege and prove actual possession. The supreme court of the United States, while holding that remedies in the courts of the United States are at common law or in equity, according to the essential character of the case, uncontrolled in this particular by the practice of the state courts (New Orleans v. Louisiana Const. Co., 129 U. S. 45, 9 Sup. Ct. 223), yet an enlargement of equitable rights by state statute may be administered by the circuit courts of the United States as well as by the courts of the state, etc. Gormley v. Clark, 134 U. S. 348, 10 Sup. Ct. 554; Frost v. Spitley, 121 U. S. 552, 7 Sup. Ct. 1129; Greeley v. Lowe, 155 U. S. 58, 15 Sup. Ct. 24. This doctrine was applied in the case of Holland v. Challen, 110 U. S. 15, 3 Sup. Ct. 495. This was a case from Nebraska. The complainant in a bill to quiet title set up a claim to the land under a tax sale, but did not aver possession. The defendant was the prior owner of the land sold for taxes. A statute of Nebraska provides that an action may be brought, and prosecuted to final decree, judgment, or order, by any person, whether in actual possession or not, who claims the title to real estate, against any other person setting up an adverse estate or interest therein, for the purpose of determining between these conflicting claims. The supreme court held that this created an exception to the general rule on that subject. The language of the court shows that this statute modifies the general rule of equity, that, in order to maintain a bill to quiet title, it is necessary that the complainant must be in possession, and, in most cases, that his title should have been established by law, or founded on undisputed evidence or long-continued possession. The court also held that this was an enlargement of equitable rights which could be administered by the circuit courts of the United States within that state as well as by the courts of the state itself. There are cases in the supreme court which seem to conflict with the doctrine of Holland v. Challen,—such as Whitehead v. Shattuck, 138 U. S. 146, 11 Sup. Ct. 276, in which this case and others are commented upon. But these cases all turn upon the crucial question, is this a suit cognizable in equity, or has the complainant a plain, adequate, and complete remedy at law? Wehrman v. Conklin, 155 U. S. 314, 15 Sup. Ct. 129. The supreme court of the United States, in Rich v. Braxton, 158 U. S. 376, 15 Sup. Ct. 1006, held in a case like the one at bar, coming up from West Virginia, that the complainant who sought to quiet his title did not have a plain, adequate, and complete remedy at law. In Davis v. Gray, 16 Wall. 203, it is held that a party going into a national court does not lose any right or appropriate remedy of which he might have availed himself in the state

courts of that locality, unless, indeed, it conflicts with the constitution of the United States. Scott v. Neely, 140 U. S. 106, 11 Sup. Ct. 712; Grether v. Cornell's Ex'rs, 43 U. S. App. 779, 23 C. C. A. 498, 75 Fed. 742. The subject is treated exhaustively, and very many authorities are cited, in Darragh v. Manufacturing Co., 23 C. C. A. 609, 78 Fed. 7. In West Virginia the supreme court of that state, while rigidly enforcing the general rule in every other case in which it is attempted to remove a cloud on the title, and while requiring in such cases, as an inexorable condition precedent to the relief sought, that the complainant be in possession, if he relies on the legal title, made an exception in every case in which the cloud on the title is created by a tax deed charged to be irregular or void. This is distinctly and expressly shown in the cases of Moore v. McNutt, cited supra, and in Christian v. Vance, reported in 24 S. E. 596,—both cases in the supreme court of West Virginia. In the case first named, the general doctrine, as has been seen, is clearly stated; and in the last-named case, while the doctrine is repeated, a cloud created by tax deeds is distinctly excepted. This practice prevails, and has for a very long period prevailed, in West Virginia, without question. It arose out of the construction put by the court of that state upon its tax laws adopted soon after the organization of the state. And, although the tax laws then adopted have been changed in some particulars, still the action of the court of last resort in that state conclusively indicates its opinion that in this respect the change of the law has not affected this practice. Forqueran v. Donnally, 7 W. Va. 114; Dequasie v. Harris, 16 W. Va. 359; Carskadon v. Torreyson, 17 W. Va. 43; Jones v. Dils, 18 W. Va. 759; Orr v. Wiley, 19 W. Va. 150; Simpson v. Edmiston, 23 W. Va. 675; Danser v. Johnsons, 25 W. Va. 380; Clayton v. Barr, 34 W. Va. 290, 12 S. E. 704; Christian v. Vance (W. Va.) 24 S. E. 596. Without doubt, the existence of large bodies of wild and uncultivated land in that state, and the facility with which clouds could be created upon the title, furnished the reason for, and required the enforcement of, this rule. An examination of the facts stated in Rich v. Braxton, supra, not only justify, but show the imperative necessity of, this departure from the general rule. The court of last resort of the state of West Virginia having construed its statutes so that a bill to remove a cloud upon a title, created by an irregular or void tax deed, can be brought by one out of possession, and who relies upon his legal title only, this construction will control this court. This disposes of the questions of law raised by the assignments of error. We see no error in the facts found by the circuit court, and the decree of the circuit court is affirmed.

BROWN v. FRENCH, County Treasurer, et al.

(Circuit Court, D. Montana. April 13, 1897.)

No. 458.

1. NATIONAL BANKS—TAXATION OF CAPITAL AND STOCK.
The Montana statute (Pol. Code, § 3692) provides for assessing shares of bank stock to the owners thereof, and, to aid the assessors in determining their value, requires the bank to furnish a verified statement showing the amount and number of shares of its capital stock, surplus, etc. An assessor, instead of demanding the statement here required, presented to a national bank a blank form for listing property subject to taxation. The bank did not return a verified list, but its assistant cashier handed to the assessor a statement beginning, "Capital, $800,000," followed by items of surplus, undivided profits, United States bonds, and real estate. The assessor deducted the amount of the bonds and real estate from the "capital" and assessed the remainder to the bank, as stock. *Held*, that the tax was illegal, as the capital of national banks is exempt from taxation under the federal laws, and as both the state and federal laws require the shares to be taxed to their owners; and that the form of the return did not warrant the assumption that the bank owned its own shares.

2. SAME—ESTOPPEL.
A national bank which returns its capital for taxation is not thereby estopped from setting up that the same was not subject to taxation, and refusing to pay the tax.

3. SAME—INJUNCTION.
A federal court will enjoin a sale of the real estate of a national bank to enforce payment of taxes illegally assessed against its capital stock, under a law which would make the sale a cloud on its title, though the state law gives an action at law to recover back taxes illegally exacted.

4. SAME—NATIONAL BANK RECEIVERS.
A receiver of an insolvent national bank occupies a fiduciary relation to its creditors, and may sue in equity to enjoin the collection of taxes illegally assessed against the stock of the bank.

Toole & Wallace, for complainant.
R. R. Purcell and Carpenter & Carpenter, for defendants.

KNOWLES, District Judge. This is an action on the part of complainant to enjoin the defendants from proceeding to sell certain real estate, the property of the First National Bank of Helena, for taxes claimed to be due from said bank to said county of Lewis and Clarke for the year 1896. It appears from the bill that complainant is the receiver of said bank, appointed by the comptroller of the currency of the United States, and has qualified and is acting as such officer; that said French is the treasurer of said Lewis and Clarke county, and as such the collector of taxes for the same; that said French has advertised for sale, and threatens to sell, the real estate of said bank to pay said taxes; that one E. D. Edgerton, who was then the receiver of said bank duly appointed by said comptroller, paid the taxes upon all of the real estate of said bank, which was advertised for sale as above stated; that said bank was a national bank, incorporated under the banking act of the United States, and was conducting business as such. The tax claimed to be due from said bank, and for which said sale was

advertised and proposed to be made, was an assessment on what is claimed to be for the shares of stock of said bank, valued at $497,906. From the affidavit of W. J. Bickett and Henry T. Davis, it appears that a blank form for a return of a list of property subject to taxation for the year 1896 in the county of Lewis and Clarke, Mont., was presented to said bank, and a list of said property demanded. It is set forth in the bill that the said bank never made out a verified list of said property, but, in the latter part of June of the said year 1896, George H. Hill, then the assistant cashier of said bank, for it handed to said Bickett, as deputy assessor for said county, the following:

Capital	$800,000 00
Surplus	100,000 00
Undivided profits	94,000 00
	$994,149 01
U. S. bonds	$100,000 00
Real estate	

It is set forth, also, in the bill, that the said bank did not for the year 1896, but that the said assessor did for that year, prepare the assessment list of property belonging to the said bank, and that he (the assessor) estimated for himself the value of the property. The assessor added the $100,000 in United States bonds, and the value of the real estate, estimated at $147,290, together, and then deducted the amount from the said $994,149.01, and then took as the value of the stock two-thirds of the amount left, which, according to the calculations of said assessor, left $497,906. For this amount the bank was assessed. The deputy, Bickett, in his affidavit claimed that this was the value of the shares of stock, and this stock was assessed to the bank.

The return, if any, of the bank, was of capital. The entry of "stock" by the assessor opposite to the said sum of $497,906 would appear to also indicate capital stock, and not the value of shares of stock. There is no number of shares indicated. It is stated in the affidavits that the bank has been accustomed to make such returns for assessments for several years prior to 1896. This would not make it legal. Section 3691, Pol. Code Mont., provides:

"The stockholders in every bank or banking association organized under the authority of this state or the United States, must be assessed and taxed on the value of their shares of stock therein, in the county, town, city or district where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such place or not. To aid the assessor in determining the value of such shares of stock, the cashier or other accounting officer of every such bank must furnish a verified statement to the assessor, showing the amount and number of shares of the capital stock of each bank, the amount of its surplus or reserve fund, the amount of investments in real estate, which real estate must be assessed and taxed as other real estate."

Section 3692:

"In the assessment of the shares of stock mentioned in the next preceding section, each stockholder must be allowed all the deductions and exemptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this state, and the assessment and taxation must not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state."

It will be seen from this section that the law provides for the assessing of shares of stock to the owners, and to this end the cashier or other accounting officer of a bank must furnish a verified statement showing the amount and number of shares of the capital stock, and the surplus or reserve fund. It is not required that such officer should state the names of the shareholders. The statement is required to enable the assessor to fix the value of the shares of each stockholder. There is nothing in any of the affidavits to show that any such statement as is provided in said section 3691 was demanded of any officer of the bank. If the statement given of the amount of capital, the undivided profits, and surplus was intended to comply with this provision of the statute, this did not authorize the said assessor to list the shares of stock to the bank. Neither a national bank nor the stock therein can be taxed by a state law unless the United States expressly authorizes the same, and then only to the extent of such authorization. Mercantile Bank v. City of New York, 121 U. S. 138, 154, 7 Sup. Ct. 826. I am unable to see how the term "capital," as returned by Hill, the assistant cashier, can be construed to mean shares of stock. There is a clear and well-understood distinction between the terms "capital" and "shares of stock." When the assessor made his computation, he found $497,906 of stock. If this meant the value of the stock, we do not have the number of such shares, or by whom held. Unless the bank owned the shares of stock, the assessor had no right to assess the same to the bank. The law, both state and national, provides that the shares of stock shall be assessed, and to the owners thereof. The bill avers that there were various individual stockholders of the said bank, holding various numbers of shares of said capital stock in separate and distinct ownership. It cannot be assumed that the bank owned all the shares of its capital stock. There is no list of the bank showing this. I do not think the return that the bank made can be construed to be a return of the shares of the capital stock. It has been held that the capital of a bank is not subject to state taxation. If the bank gave in its capital for taxation, it is not estopped now from refusing to pay the same. It would be the same as listing property exempt from taxation, and there is no reason of justice or public policy which would preclude the bank from refusing to pay the same. Cooley, Tax'n, 263, 264; Dunnell Manuf'g Co. v. Inhabitants of Pawtucket, 7 Gray, 277; City of Charlestown v. Middlesex Co. Com'rs, 109 Mass. 270. If the assessor made out the list, and assessed the capital or shares of stock to the bank, he had no right to do either. He should have known that the bank was not liable to pay taxes on the shares of its stock in solido; that that tax was due from the holders of such shares; and, as for the capital, that was not permitted to be taxed. National Bank v. City of Richmond, 42 Fed. 877.

The next question presented is as to whether the court has any right to enjoin the collection of this tax. It is claimed on behalf of the defendant that the receiver, Brown, should pay this tax under protest, and then recover the same back from the tax