No. 8502

Supreme Court of Illinois

Bank of the Republic

vs.

Hamilton County

At a Supreme Court of the State of Illinois, began and held at Mount Vernon, within and for the first Grand Division of said State, on Tuesday the ninth day of November, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable John D. Caton, Chief Justice.
" " Sidney Breese, Associate "
" " P. H. Walker, " "

The Bank of the Republic,
Plaintiff in error,
vs
The People of Hamilton County,
Defendants in error.

} Appeal from Hamilton.

Be it remembered, that, heretofore, to-wit: On the first day of October, A.D. 1858, the Plaintiff in error, in the above entitled cause, by Messrs Rich & Strode, Attorneys, filed in the Office of the Clerk of the said Supreme Court, a duly certified transcript of the Record of said Cause, as made by the Circuit Court of Hamilton County, which said transcript, so certified and filed as aforesaid, is in the words and figures following.

[8502-1]

Supreme Court of the State of Illinois

The Bank of the Republic
Plaintiff in error
vs.
The People of Hamilton County
Defendants in error

} Agreed case from Hamilton

This case was brought into the Circuit Court of Hamilton County by appeal from the County Court of Hamilton County in the matter of the application by the plaintiff to said County Court for a reduction of the assessment of the property of said Plaintiff as made by the Assessor of Hamilton County for the year 1857 which said application was refused by said County Court at the December term thereof A.D. 1857.

The said cause came on for trial and was heard before the Honorable Edwin Beecher Circuit Judge at the May Term of the Circuit Court of Hamilton County A.D. 1858 and was tried by the said Court without the intervention of a Jury.

On the trial of the said cause it appeared in evidence from the assessment lists made out by the County Assessor of Hamilton County for the year 1857 and in the possession of the County Clerk of said County that the valuation of the personal property of the Plaintiff for said year was Four hundred and forty two thousand dollars; that the said valuation was entered in said lists in the column headed "Bonds Stocks" and that

L8507-2]

there was no noting on the said lists of the words "by assessor" opposite the name of plaintiff or in any way connected therewith -

It further appeared from the testimony of William Rockcox that he was agent for the plaintiff and resided in the precinct of McLeansboro in the County of Hamilton where the said Bank of the Republic is located that the County Assessor called upon the said Agent some time in the month of June or July 185[illegible] for a statement of the property of plaintiff for taxation: that the President and Cashier of said Bank were at that time absent from said County, that said Assessor then stated to said Agent that the list of property required of the Plaintiff would be furnished in time for the purpose of assessment if supplied by the first day of September thereafter and that said agent engaged to procure such statement by that time. that said Assessor did not at any time leave with said agent or at the office of the Plaintiff any written or printed notice requiring Plaintiff to make out for the said Assessor a statement of the property required to be listed by the said Bank nor any written or printed blank for the statement required of said Bank. that on the nineteenth day of August A.D. 185[illegible] the said agent deposited in the Post office at Dwight in Livingston County in the State of Illinois a statement of the property of said Bank for taxation as listed and signed by Charles H. Rockwell the President of said Bank, that said list so made out stated the Capital stock of said Bank paid in at Fifty thousand dollars. that said list was

directed to S. A. Martin County Clerk of Hamilton County Illinois, that a letter was enclosed with said list requesting said County Clerk to hand the same to the Assessor of said County.

It also appears in evidence by the testimony of John M Elvain, that said M Elvain was Deputy Clerk of said County of Hamilton in the months of August and September A. D. 1857; that while performing the duties of the office of the County Clerk of said County he received through the Post Office a letter enclosing a statement purporting to be a list of the property of the Bank of the Republic for taxation that there was also a special request accompanying said list that it might be handed to the assessor of Hamilton County that the said letter arrived by ordinary course of mail that said M Elvain did not see the said Assessor for some days after the arrival of said list that he informed said Assessor on the first opportunity and before said Assessor had completed his assessment list for said year of the arrival of said statement at his office and requested said assessor to call at his office and receive the same that he then informed the said assessor of the contents of said statement so received that said assessor stated that he would enquire of the Auditor for further information and did not at any time apply for or procure the said statement from said Clerks office for use or examination.

It also further appears in evidence from the testimony of Job Standifer that said Standifer was the Treasurer and Assessor of the

County of Hamilton for the year 1857 that he resided at that time about 9 miles from McLeansboro the County seat of said County that he called on William Pickards the agent for the Bank of the Republic at McLeansboro in said County some time in the month of May 1857 for a statement of the taxable property of said Bank for said year that he stated to said agent that said list might be handed in at any time by the first day of September of that year that he left with said agent no written or printed notice nor blank to make out a statement of the property of said Bank required to be listed and that he left no such notice or blank at the place of business of said Bank or elsewhere and that he did not at any time make any note in any book or memorandum of the date of leaving any such notice or the name of the Bank so required to list that said Assessor finished his round of assessing through said County for said year on the eleventh day of September, that before proceeding to make up and draw off his lists of assessments for said year he was informed by Mr McElvain Deputy Clerk of said County that he had received a statement of the property of the Bank of the Republic, that said McElvain told him that the amount reported in said statement was Fifty thousand dollars, that said assessor never saw said statement, that said agent Pickards was not in said County when said Assessor heard of the arrival of said statement nor until after said assessor had closed his books of assessment for said year that on the fifteenth day of Septem

ber A.D. 1857 and after said assessor was informed of the arrival of said statement the said assessor addressed a letter to the Auditor of the State of Illinois enquiring in relation to the amount of taxable property of said Bank and that said Auditor replies in the following letter to wit.

State of Illinois

Auditors Office Springfield Sept 19th 1857

Job Standifer Esq.

Dr Sir Your note of the 15th inst requesting information in regard to the taxable property of the Banks located at Mt Vernon is at hand The only means of information that I possess in relation to the matter are the quarterly statements of affairs on file in this office for the quarter ending first Monday in April 1857 from which the following are correct abstracts viz.

C. S. Tinsman & Cos. Bank

Capital stock paid in and invested according to law

$150.000

Hamilton County Bank

Capital stock paid in and invested according to law

$202.500

Bank of the Republic

Capital stock paid in and invested according to law

$442.000

The above statements are sworn to by the officers of the several Banks. The law of last session also makes them liable to taxation upon their surplus profits or reserved funds but I have no means of ascertaining the amount of the latter item

Respectfully yours

Jesse K. Dubois Auditor

It also further appears in evidence from the testimony of said Plaintiffs that some time during the month of May A.D. 1857 he received through the hands of the County Clerk of Hamilton County a paper purporting to be a circular from the Auditor of the State of Illinois of which the following is a copy to wit:

Auditors Office
Springfield Illinois May 14th 1857

Sir By the 6th section of an Act of the Legislature of the State of Illinois entitled an Act to amend an act to establish a general system of Banking" passed Feby. 15th 1851 and the Act amendatory thereto approved February 14th 1857 it is provided "that the capital stock of every Bank or Banking association paid in or secured to be paid in except so much thereof as is invested in real estate which shall be taxed as real estate as herein provided together with the surplus profits or reserved funds and also the real estate of every such company shall be listed by the President or Cashier thereof" and assessed and taxed in the same manner as other personal and real estate of the County and the Town in which such Bank or Banking Association is located. The 7th section of said act repeals the 20th and 21st sections of the Act of the Legislature for the assessment of property and for the assessment of property and collection of taxes in Counties adopting township organization. Fearing in consequence of the delay in publishing the laws of the last session that your assessor or assessors may be unconformed of the change in relation to the assessment of

Bank property I therefore request you to notify your assessor or assessors of the change in the law and require them to assess the Banks in your County under the law now in force. In case of the absence refusal or neglect of the officers of the Bank to make the list required by the law upon application this department will furnish the assessor with such information in relation to the property of such Bank as may be in possession of

Yours respectfully
Jesse A. Dubois Auditor

It also appeared in evidence from the testimony of Charles A. Rockwell that said Rockwell was the President of said Bank of the Republic in August A. D. 1857 - that the amount of Capital Stock of said Bank paid in at that time was Fifty thousand dollars, that there was at that time no surplus profits nor reserved funds belonging to said Bank that there was no real estate belonging to said Bank that there was no other personal property belonging to said Bank over and above the said Fifty thousand dollars capital paid in that said Bank has at that time Bonds and Stocks deposited with the Auditor of the State of Illinois as a basis of issue for the circulating notes of said Bank to the amount of Four hundred and six thousand dollars being the market value of said Bonds as estimated by said Auditor, that the amount of circulating notes issued to the said Bank upon said Bonds was Four hundred and three thousand dollars, that the balance

[illegible]

due upon the purchase of said Bonds when procured was paid in the notes issued by said Bank that said Bonds deposited draw interest and said Bank receives said interest when paid so long as said Bank complies with the provisions of the general banking laws of the State of Illinois; that said Bank has Thirteen thousand dollars in specie on hand on the sixth day of April A.D. 1857 that after the passage of the Act of the Legislature of the State of Illinois in 1857 amendatory to the general banking law of said State the said Auditor demanded of said Bank the proof that Fifty thousand dollars of actual cash capital has been paid in or secured to be paid in to said Bank and that such proof was filed as required in said Auditors office; that there is no other or further cash capital paid in or secured to be paid in to said Bank than the said sum of Fifty thousand dollars.

The said parties here rested their case and the said cause having been submitted to the said Court upon the testimony as aforesaid the said Court did thereupon determine order adjudge and decree that the valuation of the property of the said Plaintiff for the year 1857 be reduced to the sum of Four hundred and nineteen thousand dollars and that the said judgment of said Court be certified by the Clerk of said Court to the County Clerk of Hamilton County and that the said County Clerk be directed to correct the assessment lists for said year in accordance with the said judgment of said Court.

State of Illinois } Circuit Court of Ham-
ilton County } of the May Term A.D. 1858

We do hereby agree in the case of
The Bank of the Republic vs. the People of Ham-
ilton County that the following questions and
points of law arising in the said cause may be
submitted to the Supreme Court of the State
of Illinois for final judgment and determi-
nation and that no further action be taken or
further proceedings had in the said cause un-
til the opinion of the said Supreme Court
shall be first had thereon.

1st Whether the said assessment of Plaintiffs prop
erty for the year 1857 was not invalid for the
reason that the assessor did not comply with
the provisions of the statutes of the State of Illi-
nois in not leaving the notice and blank re-
quired by law for the listing of property and
not making any note or memorandum of
the date and name as required in such
cases and not noting the words "by assessor"
in the assessment lists against the name
of the Plaintiff.

2nd Whether there was any such neglect or refu-
sal on the part of Plaintiff to list property
as the law contemplates in order to authorize
the assessor to value the property indepen-
dently of the owner.

3rd Whether said assessor was not bound to
accept the statement of the property as listed
by the President of said Bank on being no-
tified that it was ready for him at the Banks
office before closing his assessment lists and

L 8502-6

before entering therein any valuation of said property -

4th "Whether said statement of the Auditor was sufficient authority for said assessor to enter the valuation of the property of said Bank without further information or enquiry -

5th "Whether the assessor had any legal authority to assess bank property at all -

6th "Whether the provision of the law is not compulsory requiring a reduction of the assessment to the valuation fixed by the person required to list when verified by the oath of such person applying for such reduction -

7th "Whether the Bonds or Stocks deposited with the State Auditor as the basis of issue of said Bank are liable as personal property of said Bank

8th "Whether said Stocks so deposited are the measure of the Capital Stock of said Bank and liable to taxation according to their market value

9th "Whether the act of 1857 amendatory of the general banking law makes the bona fide cash capital of said Bank actually paid in or secured to be paid in the basis of taxation for said bank -

10th "Whether the term "capital stock paid in" as employed in the sixth section of said amendatory act is to be construed as synonymous with the term "bona fide cash capital actually paid in" as it occurs in the eighth section of said act

11th "Whether the "Capital stock paid in or secured to be paid in" as used in said sixth section means the investment of moneys other than

the proceeds of the notes of issue of the Bank which or in purchase of real estate coin stocks deposited or any other property belonging to the Bank.

12th Whether the Bank officer in listing the property of the Bank as required by law is bound to include in such list the stocks deposited by the Bank estimated according to their market value together with the coin on hand and also the actual cash capital paid in other than the proceeds of its own circulating notes as well as any surplus profits and reserved fund in the Bank.

13th Whether if said stocks deposited are required to be listed as Capital Stock together with the coin bona fide cash capital paid in surplus profits and reserved fund the Bank may not deduct from the aggregate amount thereof the true amount of its outstanding circulation.

14th Whether the basis of taxation for Banks under the said amendatory act of 1857 is the same with that for individuals and other corporations or associations namely the actual value of property which they own and in estimating such value whether they are allowed in listing property to deduct from the gross amount of money and credits owned the amounts of bona fide debts owing in the same manner as other persons or corporations.

15th Whether the said amendatory act of 1857 in imposing additional burdens upon the banks without any corresponding advantage or benefit conferred and not authorised at the time of the passage of the general banking law in its adoption by the people is not wholly

L8502-1

null and void and in conflict with the constitution of the United States as impairing the obligation of contracts.

16th Whether an appeal lies to the Circuit Court from the decision of the County Court on the refusal of an application to said Court to reduce the valuation of property as assessed by the County Assessor.

Witness our hands this twenty fourth day of May A. D. 1858

Rich & Steele
Attys for Plff. in Error
Chester Carpenter
Atty. for Deft. in Error

Edwin Beecher
Judge 12th Judicial Cir.
Ill.

State of Illinois }
Hamilton County } ss

I. S. Shoumaker Clerk of the Circuit Court in and for the County of Hamilton and State of Illinois do hereby Certify that the foregoing is a true and Correct Copy of the Certificate of Proceedings and the points of law and questions arising in the case of the Bank of the Republic vs the People County of Hamilton, as Certified and agreed upon by Counsel in the case or the Attornies of the respective parties in said Cause, and now on file in

my office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at McLeansboro, this the 26th day of May AD 1858.

J. Shoemaker Clerk
of the Circuit Court of
the County of Hamilton
State of Illinois

30

The Bank of the Republic,
Plaintiff in Error
vs
The People of Hamilton
County.
Defts in Error.

Filed October 1. 1858.
Noah Johnston Clk

Reparied $5.00

Supreme Court of the
State of Illinois.
Of the November Term. A. D. 1858.

Bank of the Republic.
Plaintiff in Error.
vs.
The People of Hamilton County.
Defendants in Error.

And now comes the said Bank of the Republic, by Rich & Steele, their Attorneys, and says that in the record & proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this. to wit:

I. That the Circuit Court erred in deciding that the mode of making the said assessment of Plaintiffs property was in conformity to law.

II. That the Court erred in refusing to reduce the valuation of the property of said Bank to the amount stated in the list furnished by the proper officer of said Bank after being verified by the said officers oath.

III. That the Court erred in deciding that the Bonds deposited by said Bank as security for its issues, were taxable at their market value, together with its specie on hand, without allowing any deduction for its outstanding circulation or indebtedness.

And the said Bank of the Republic prays that judgment aforesaid, ~~and~~ for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that the said Bank of the Republic may be restored to all things which they have lost by occasion of the said judgment &c.

Rich & Steele
Attys. for Plff. in Error.

[DS02-9]

Supreme Court of the
State of Illinois.
Of the November Term A.D. 1858.

The People of Hamilton County.
Defendants in Error.
ads.
Bank of the Republic.
Plaintiff in Error.

And hereafter comes the said People of Hamilton County, by Chester Carpenter their Attorney, and say that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and they pray that the said Supreme Court, before the aforesaid Justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may in all things be affirmed. &c. But because &c.

Chester Carpenter
Atty for Defts in error

Supreme Court of Illinois.

30 Bank of the Republic
Plff. in Error.

vs.

People of Hamilton County.
Dfts. in Error.

Joinder in Error.

Filed November 9. 1858.
N. Johnston Clk

And afterwards, at the aforesaid Term of said Supreme Court. and on the 11th day of the said November, in the year aforesaid. there was made by said Court, in said Cause, and entered of Record, the following Order towit:

" The Bank of the Republic
" Vs } Error to Hamilton.
" The People of Hamilton County

" Now on this day comes the said parties " by their Attorneys - And this Cause is argued " to the Court by H. S. Stuke, Esq, for and on behalf " of the Plaintiff in error - and by S. L. Freeman " Esq, for and on behalf of the Defendants in error - " And the Court not being sufficiently advised, " take time to consider."

And afterwards, at said Term of said Court - and on the 16th day of said November, in the Year aforesaid, there was made by said Court, in said Cause, and entered of Record, the following further Order towit:

" The Bank of the Republic
" Vs } Error to Hamilton.
" The People of Hamilton County

" On this day comes again the said " parties, and the Court having diligently " examined and inspected, as well the record " and proceedings aforesaid, as the matters and

L 8502-11

" things therein assigned for error, and being now
" sufficiently advised of and concerning the
" premises, for that it appears to the Court now
" here, that neither in the record and proceedings
" aforesaid, nor in the rendition of the judgment
" aforesaid, is there any thing erroneous, vicious,
" or defective - and that the record is no error.
" Therefore, it is considered by the Court, that
" the judgment aforesaid be affirmed in all
" things, and stand in full force and effect,
" notwithstanding the said matters and things
" therein assigned for error.

" And it is further considered by the Court
" that the said defendants in error, recover of
" and from the said Plaintiff in error, the costs
" in this behalf expended, and may have
" execution therefor."

Opinion by

The People of Hamilton County - defts. in Error.
als
The Bank of the Republic. Plff. in Error

Brief of Defts in Error.

"What was the taxable property of the Bank", according to the facts set forth on pages 3rd and 4th of the Plaintiffs' printed argument?

First; what is the rule laid down in the constitution for the assessment of property, or for levying taxes? Art. 9th § 2, declares that "the General Assembly shall provide for levying "a tax by valuation, so that Every person and "Corporation shall pay a tax in proportion to the "valuation of his or her property; such value "to be ascertained by some person or persons "to be elected or appointed in such manner "as the General assembly shall direct and "not otherwise".

Now, here are two rules laid down respecting taxation - one, that Every person and Corporation shall pay a tax in proportion to the value of his or her property - and the other, prescribing by whom the person who shall ascertain such value, shall be directed to be appointed.

8502-127

The constitution prescribes no rule as to the manner or mode of ascertaining the value of property – nor does it prescribe a rule by which the mode of ascertaining such value shall be uniform as applied to the different species of property – or as applied to the same species of property when owned by different characters of persons.

For instance, the revenue law in prescribing the rule by which to ascertain the value of lands, of horses, of cattle,* is to value them without taking into consideration the amount which the owner may owe, either on account of that particular property, or on any other account – – the rule prescribed by the revenue law for ascertaining the value of another species of property – to wit. money, is different; here the law allows a person to deduct from his money, the amount which he may owe, and the balance only of the money shall be assessed.(a)

*Scales, T. & B's stat. p. 1033 sec. 10.

(a) Scales, T. & B's Stat. p. 1033. sec. 11.

Now take these two instances – A. has property in land, horses and cattle, of a value of $5000; he owes $5000. – yet A's property is assessed at $5000. B. has property in specie, (gold and silver) to the amount of $5000: he owes $5000. and B. is assessed upon nothing.

This is the practical application of two

rules for ascertaining the value of two kinds of property – this law seems to be acquiesced in as not being an infringement of any constitutional provision, and I think properly so, because the constitution does not require that the mode of ascertaining the value of property of different kinds, shall be uniform – but only requires that every person and Corporation shall pay a tax in proportion to the value of his or her property –– and that such value shall be ascertained by persons whom the General Assembly shall direct–

Again, the revenue law prescribes different rules for ascertaining the value of property owned by different classes of persons– for instance a farmer, whose property consists of land, horses, and Cattle, is assessed according to the value of such property, and according to the value and quantity owned by him at a particular time fixed by law, the farmer being allowed to deduct from the value of property which may be the product or stock of this State, the amount owing by him for such property &c. (b)

(b) Scales, T. & B's Stat: p 1035. sec. 14.

The value of the property of a merchant is ascertained by a very different rule – as will be found in this Statute – (see Scales, Treat; & Blackwell's Stat: p. 1034 – sec. 12.

L.B.502-13

Now the prescribing of these different rules by the legislature for the ascertainment of the value of property, is certainly not in contravention of the constitutional rule that "every person and corporation shall pay a tax in proportion to the value of his or her property." If property is to be taxed in proportion to its value - there must be some mode of ascertaining that value - The constitution prescribes no mode: then it is left to the legislature to prescribe the mode. The constitution does not restrict the legislature in the adoption of a rule for that purpose, to a rule that shall be uniform in as applied to different kinds of property, or as applied to different classes of persons - The legislature not being restricted in that respect may adopt one rule for ascertaining the value of one species of property, and a different rule for ascertaining the value of another species - and may adopt a different rule as applied to different classes of persons - and a moments consideration will show that the rule for ascertaining the value of property must, of necessity, be as flexible as the different species of property assume different and peculiar characteristics, and is employed in different and peculiar channels - It would

not be just to apply the same rule for ascertaining the value of the property of a farmer that is used to ascertain the value of the property of a merchant: for obvious reasons.

Then to apply these principles to this case; it being first remarked that the plaintiff in error has evidently mistaken the rule laid down in the constitution - he seems to take the rule to be that every person and corporation shall pay a tax in proportion to what he or she <u>is worth</u> - when the true rule is too clearly stated to be easily misunderstood, to be that "every person and corporation shall pay a tax in proportion to <u>the value of his or her property</u>."

Now certainly in ascertaining the value of <u>my property</u>, for instance, a horse, no one would dream that it was necessary to know how much I am indebted - the horse is of a certain value regardless of my debts -

But if the object be to ascertain how much <u>I</u> am worth, then of course it would be proper to deduct from the value of my property the amount of my indebtedness -

And perhaps it would not be improper to suggest that the question here is not as to the <u>policy</u> or <u>justness</u> of a par-

ticular rule, but the question is what is the rule. The former might be very properly addressed to a convention forming a constitution - while the latter is the only one properly addressed to a judicial tribunal.

Then to the case at bar: the revenue law (c) provides that when any person, company or corporations shall be making up the amount of moneys and credits to be listed for taxation, they shall be Entitled to deduct from the gross amount of moneys & credits the amount of all bona fide debts owing by them - This is a rule then which the legislature have seen proper to adopt in the ascertainment of the value of those species of property - and which they have seen proper not to extend to other kinds of property. They clearly have the power, because unrestricted in that regard, to make that discrimination.

(c) Scales. J. & B's stat. p. 1033 - sec. 11 -

But the same section above citied Expressly Excludes any bank, company or corporation. Exercising banking powers or privileges, from the privilege of making a deduction of its indebtedness from the gross amount of its moneys & credits - when making up the amount of its moneys & credits for assessment -

and of this exclusion from that privilege the plaintiff in Error complains, because in prescribing a different rule for ascertaining the value of property belonging to different classes of persons, the legislature have violated the rule of uniformity or Equality prescribed in the constitution – But the constitution, as I have shown, prescribes no rule of uniformity or Equality, in the mode of ascertaining the value of property – but leaves the legislative power wholly unrestricted in that respect.

Then the mere fact that a different rule is prescribed for ascertaining the value of moneys and credits belonging to banks, from that which is prescribed for ascertaining the value of moneys & credits belonging to natural persons or other corporations, constitutes no valid objection to be law as regards its constitutionality.

And upon the score of common justice, if it were possible for such a consideration to Enter into this question, there would seem to be no cause for complaint when we consider that the banks are nearly all indebted to an amount very little less than the amount of their moneys & credits – and are Enjoying Extraordinary powers and privileges which are denied

[8-502-15]

to natural persons and all other corporations.

One other point which perhaps may be considered as incidental to the question already submitted - Mr. Steele, on page 6 of his printed argument says that "with regard to the assessment of corporations, the "constitution is as explicit as in the case of "individuals; in this particular they stand "side by side with them". That I grant to be true. Mr. Steele continues: "And by "express statute (General Banking act, sec. "7) associations formed under this act are "declared to be Corporations." That I grant also to be true. "So that under the constitution", Mr. Steele adds, "these Corporations are required only to 'pay a tax in "proportion to the valuation of their property' "unless it can be shown that the General "Assembly, under the authority granted them "'to tax persons using and exercising franchises "and privileges' have exercised that power, "in the act creating these corporations, and "assumed to tax them by some different "rule therein prescribed." I admit that so far as the constitution prescribes any rule at all, it prescribes the same rule

for taxing the property of Corporations and natural persons - that is each shall "pay a tax in proportion to the value of their property."

"On the presumption", Mr. Steele continues, "that there are no such special "provisions, regulating the matter of tax- "ation, as applied to these institutions, then "like all other Corporations, each one must "be taxed upon its 'capital actually paid "in.'"

Now it seems to me that there is a most remarkable inconsistency between Mr. Steele's premises and his conclusion - and so far from its being true that the conclusion is the legitimate consequence of the premises - the premises conclusively repel such a conclusion. Let us examine it - Mr. Steele first assumes that persons and Corporations shall alike "pay a tax in propor- "tion" (not to their 'actual capital paid in' but "to the valuation of his or her prop- "erty" - therefore he concludes that Corporations shall pay a tax in proportion to their "capital actually paid in" and not "in proportion to the value of their property" — it being clear that there is a

[8502-16]

wide difference in the two propositions of ascertaining the value of property, and of ascertaining the "capital actually paid in" for such property.

That difference may be illustrated as follows- a farmer purchases a farm at $10,000 - he pays $5000. upon his purchase, and gives his note for the remaining $5000. Now the farm is his property - it is of a value of $10.000 - yet, so long as his note remains unpaid, the "actual capital paid in" by him is only $5000.

The effort is Evident to show that Banks shall be taxed not in pursuance of the constitutional rule, "in proportion to the value of their property", but in proportion to what they are worth after paying their debts. The latter might be the more just rule - but that is sufficiently answered by the consideration that it is not the rule.

Now, in regard to the rule which the legislature in their unrestricted discretion in that regard, have seen proper to prescribe for ascertaining the valuation of the property of a Bank, with a view to taxation.

The 6th section of the act of February 1857, provides that "The Capital Stock of "Every bank or banking association, paid in "or secured to be paid in, except so much "thereof as is invested in real Estate, which "shall be taxed as real estate, as herein pro- "vided, together with its surplus profits or re- "served funds, and all the real estate of every "such company, shall be listed by the Pres- "ident or Cashier thereof, and assessed or "taxed in the same manner as other per- "sonal and real estate of the County and "towns in which such bank or banking "association is located."

Now this act simply declares what property of the banks shall be listed - and that it shall be assessed and taxed in the same manner as other property, that is, in proportion to its value.

But Mr. Steele has a difficulty in determining what is meant by the expres- sion used in the act to designate a part of the property required to be listed - He

asks what is meant by the expression "Capital Stock" — I would suggest that it would be better to ask what is meant by the term "Capital Stock paid in, or secured to be paid in." And in answering this inquiry "we shall be much aided in "our investigations by considering first "briefly the earlier method of establishing "and regulating banking institutions, and "inquiring into the main point of difference "between that and the present method." (Mr. Steele's argument; page 8).

Mr. Steele says - (page 8), that "accord- "ing to the old system, the amount of capital "stock being once fixed, it was taken up by "subscriptions, each share consisting of a "certain sum, a certain proportion of "which was paid into the institution or "corporation, by instalments on each "share from time to time, as calls were "issued, to make up the capital required."

Now to illustrate: the shares are fixed at $100. each; A. subscribes for 10 shares, making $1000: Of this he pays in 10 per cent, making $100. paid in, for the remaining $900. of his sub- scription to the Capital Stock of the Bank, he gives his individual note

payable to the Corporation, and which is to be paid upon calls. Suppose nine other persons subscribe each the same amount to the capital stock of the Bank making in all $10.000 subscribed - Each paying in 10 per cent upon his subscription, making $1000. paid in, and for the residue each gives his note to be paid upon call. Thus we see that $10.000 is subscribed to the Capital stock of the Bank - only $1000. is "paid in" - the remaining $9000. being "secured to be paid in." Then the Capital stock of that Bank. "paid in and and secured to be paid in" is $10.000.

To such a state of case apply the act of 1857 - that the Capital Stock of every bank, "paid in and secured to be paid in", shall be listed for taxation and we can readily understand that the amount to be listed is $10.000. although only $1000. is "capital actually paid in."

Mr. Steele then continues: "The specific term applicable in such cases to a "corporation by way of distinguishing its "capital, is "Stock": that upon which it trades "and conducts its business: the foundation: "the bottom upon which it rests."

(8503-18)

and let us here understand that this "foundation", this "bottom upon which it "rests." the basis or criterion of its issues, is not only that portion of the capital stock which is "paid in", but consists also of that portion which is "secured to be paid "in."

Mr. Steele adds that "it will be readily "seen that according to the rate of payment of "these shares of stock into the corporation, "was the 'capital stock paid in' more or less "increased; and in proportion as it was "so paid in, would the taxable capital of "such corporation be augmented; observing "also, that in the same proportion, would "capital be diminished in the particular "localities from which the capital paid in "here was drawn."

Now it is true, "that according "to the rate of payment of these shares of "stock into the corporation, was the "Cap- "ital stock paid in" more or less increased, but it does not follow that "in propor- "tion as it was so paid in would the tax- "able capital of such corporation be aug- "mented," because the proportion was greater than that the taxable capital was in- creased in proportion not merely to the

"capital stock paid in" but in proportion to the "capital stock paid in and secured to be paid in".

But surely the observation that "in the same proportion as the capital stock "is paid in would capital be diminished "in the particular localities from which the "capital paid in was drawn", is not a very happy illustration of the position assumed by the plaintiff in Error, when we consider that the position assumed is that the property or capital of a bank is taxable only in proportion as such capital or property which is sought to be taxed, is withdrawn from ~~such~~ certain localities, in which localities the capital would in the same proportion, be diminished: suggesting to the mind that the converse of that proposition ought also to be true - that if we find that the capital which we seek to tax has been withdrawn from certain localities - and that the capital in such localities is to the same Extent diminished, then such capital is taxable: it being understood that in speaking ~~for instance~~ of "capital" we are speaking of taxable capital.

For instance, A. & B. reside

[8502-19]

in this State – A. owns "public securities" to the amount of $100.000 – B owns money to the same amount – Now A. & B. are taxable to the full extent of $100.000 each – But A. chooses to deposit his "public securities" with the auditor, and proceed to open a Bank under the General Banking law – Then if those "public securities" when so deposited, cease to be "property", as is contended, and are not to be regarded as "capital stock"; and are not taxable, then, certainly the "taxable capital" in the "particular locality from which they were drawn, is to the same Extent, diminished".

If I am answered that the "particular locality" is supplied in return for this withdrawal, with the issues of this new bank – ~~I would~~ which would be taxable – I would answer that the "particular locality" only gets $90.000 in return, as 10 per cent of the value of the bonds deposited is withheld, so that, at least, the "particular locality" has suffered a depletion in its "taxable capital" to the Extent of $10.000 – and then if we are to determine the amount of the "capital stock" of the Bank by the Extent of such depletion, we find the ~~absurd~~ anomaly of a Bank with a "capital

stock" of only 1/9 of its circulation - ~~and of course then the result would follow that only $10.000~~

Now the $100.000 worth of bonds in the hands of A. are no less a "taxable capital" ~~that~~ than are the $100.000 worth of money in the hands of B. - Yet if B. were to deposit or pay in his $100.000 worth of money as "capital stock paid in," in a Bank ~~under~~ under the old system, Mr. Steele would not deny that it would be taxable to the full amount - and that too, notwithstanding the "particular locality" from which B's $100.000 was withdrawn was supplied in its place with, not merely 1/10 as much taxable capital as was thus withdrawn, but with three times as much as was withdrawn; for under the old system the issues were three for one.

It is not true then that we are to determine the "capital stock" of a Bank by the amount which may be withdrawn from "particular localities". And what will prove this still more clearly is the instance I have heretofore given, where $100.000 was subscribed to the capital stock of a Bank, and only $10.000 "paid in", the subscribers to the stock

giving their notes for the remaining $90,000. Now the whole amount thus subscribed is "Capital stock" - it is taxable "Capital stock", because it is "Capital stock paid in and secured to paid in" - and yet no "particular locality" has lost any of its "capital" only to the extent of the $10,000.

Mr. Steele, after showing the insecurity of the old system of banking, and that something more than "individual securities" or "cash capital paid in" was necessary to insure safety to bill holders, and good faith in bankers - proceeds to say: "Hence the inauguration of the modern "system of compelling a deposite of reliable "public securities of ample amount to "meet the notes issued by the Bank, to be "kept in hands beyond the reach or control "of the institution itself."

"These securities", Mr. Steele adds, "only "supply the place which was before oc- "cupied by individual credit-". Now this I consider an admission of all I contend for - I have only insisted that these "public securities" only occupy the place formerly occupied by the "Capital stock paid in and secured to be paid in". It only changes the shape in which the

Capital Stock shall be placed - and cannot lose their character of "Capital stock" merely because in the one case "individual credit" is pledged for the ultimate redemption of the issues, and in the other case, the "public credit" is pledged for the same purpose -

It is absurd to say that the "foundation", "the bottom on which the Bank rests, the criterion of its issues, and the security for the redemption of those issues is any thing else than "Capital stock".

And in the case of the plaintiff in Error it must be regarded as "Capital Stock paid in" as the Expression Capital Stock secured to be paid in, as used in the act of 1857, has no application to banks organized under the general banking law, and must be considered as mere surplusage -

(85-02-21)

The next question which presents itself- is as to the power of the legislature to change the rule for ascertaining the value of the property of the Bank, and to employ a different person to ascertain such value - from the rule prescribed and the persons mentioned in the General banking Law of 1851.

So much of the General Banking Law of 1851, as applies to this subject- is embraced in the 10th section, and is as follows:

"Taxes shall be levied on and paid "by the Corporation, and not upon the in- "dividual stock holders; the value of the prop- "erty to be ascertained annually by the Bank "Commissioners herein provided for; and the "rate of taxation shall be the same as that- "required to be levied on other taxable prop- "erty by the revenue laws of the State."

Now I admit-~~it~~, as a general rule, that "a bank charter is a contract- between the "State and the Stockholders, which is not to "be impaired by any statute to which they "[the stockholders] are strangers".

I further admit that the general Banking Law of 1851 is the charter of the Bank of the Republic.

I also admit that the State has the power to enter into a contract with a corporation which will restrict the former from imposing any taxes in addition to those specified and agreed upon in the charter, or from directing the value of the property of the corporation to be ascertained by any other person than the one appointed for that purpose in the charter.

But the question here is, did the legislature by the language used in the 10th section of the General Banking law, as above quoted, make any such contract in that regard as will restrict them from directing the assessment of the property of the banks organizing under it to be made by any other person than the Bank Commissioners?

I think no such construction can be given to the language used. The language used is that "the value of the property to be ~~annually~~ ascertained annually by the Bank Commissioners herein provided for." That can not mean that the value of the property shall be ascertained by no other persons than the Bank Commissioners — the question is not, "did the legislature reserve the power

to make such change?" but "did the legislature grant away the power to do so? Certainly there is no express stipulation in the act that no other person shall ascertain the value of the Bank property than the Bank Commissioners - then can it be fairly implied or assumed from the language used that the legislature intended to grant away that power?

But it cannot be assumed or implied that the legislature intended to restrict themselves in the exercise such a power, ~~unless~~ where it is not clearly and expressly done in language used. The taxing power is of vital importance to the State - the power to assess properly is incidental and essential to the exercise of the taxing power - the power to direct by whom such assessment shall be made, is of no less importance. The relinquishment of such a power is never to be assumed.

The whole community is interested in retaining it undiminished, and "that community has a right to insist that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the State to abandon it does not appear". 4 Peters Rep. 561 - 1 Ohio State Reports - new series. 573 -

"Any privileges which may exempt it (the corporation) from the burthens common to individuals, do not flow necessarily from the charter, but must be expressed in it, or they do not exist." (same cases)

If there is any ambiguity in the terms of the contract between the State and the corporation, it must operate in favor of the State and against the corporation. 2 Barn. & Adolph. 793; 11 Peters R. 544; 1 Ohio State Reports- New series. 574.

The same rules are ~~but~~ laid down clearly and forcibly in 8 Ohio R. 286; 11 Ohio R. 12; Ibid 393—

There is but one more question which I shall consider—

The 5-th section of the 10-th article of the constitution declares that "No act of the General assembly authorizing corporations or associations with banking powers shall go into effect, or in any manner be in force, unless the same shall be submitted to the people" &c.

It is contended that the 6-th section of the act of 1857 is inoperative, because it was not submitted to the people, in pursuance of the above provision.

[0502-23]

Now I ask - is that 6th section which has reference only to the subject of taxation of bank property, "an act authorizing corporations or associations with banking powers"?

Suppose one section of the General Banking law provided that if an officer of a bank should swear falsely in relation to the quarterly statements they are required to make, he should be confined in the penitentiary for a term of 5 years - if the legislature should now want to extend that term to 10 years, must such an amendment be submitted to the people?

N. L. Freeman - atty
for defts in Error -

Bank of The
Republic

vs

Hamilton &c.

Argument of
N. L. Freeman
for defts in Error

Know all Men by these Presents, That we, Charles H. Rockwell and Mahlon D. Ogden

are held and firmly bound unto The County of Hamilton in the State of Illinois

in the full and just sum of five hundred dollars

to be paid to the said County of Hamilton

its

certain attorney, ~~executors, administrators,~~ or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of August

in the year of our Lord one thousand eight hundred and Sixty

WHEREAS lately at a ~~Court of Pleas~~ Term of The Supreme Court of the State of Illinois a,

Judgment in a suit depending in said Court, between The said County of Hamilton & The Bank of the Republic

was rendered against the said Bank of the Republic

& in favor of said County of Hamilton

and the said Bank of the Republic

having obtained A writ of Error and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said County of Hamilton

citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the First Monday of December next.

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Bank of the Republic

shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make it plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

C. Goodyear
J. W. Westwood

Chas. H. Rockwell [SEAL.]
by Mahlon D. Ogden [SEAL.]
[SEAL.]

APPROVED BY

S. D. Caton Ch Just Ill

Appeal bond

Bank

v

Hamilton Co.

To be allowed by the Chief Justice of the State of Illinois and ——— filed in the Supreme Court of the State

ARGUMENT

IN THE CAUSE OF

THE BANK OF THE REPUBLIC,

PLAINTIFF IN ERROR,

VS.

THE PEOPLE OF HAMILTON COUNTY,

DEFENDANTS IN ERROR;

IN THE

SUPREME COURT OF ILLINOIS,

AT THE

NOVEMBER TERM, 1858,

ON BEHALF OF THE PLAINTIFF IN ERROR,

BY

H. T. STEELE.

CHICAGO:
PRINTED BY JAMESON & MORSE, 14 LA SALLE STREET.
1858.

ARGUMENT

IN THE CAUSE OF

THE BANK OF THE REPUBLIC,

PLAINTIFF IN ERROR,

VS.

THE PEOPLE OF HAMILTON COUNTY,

DEFENDANTS IN ERROR;

IN THE

SUPREME COURT OF ILLINOIS,

AT THE

NOVEMBER TERM, 1858,

ON BEHALF OF THE PLAINTIFF IN ERROR,

BY

H. T. STEELE.

CHICAGO:
PRINTED BY JAMESON & MORSE, 14 LA SALLE STREET.
1858.

IN SUPREME COURT OF ILLINOIS,

NOVEMBER TERM, 1858.

The Bank of the Republic,
PLAINTIFF IN ERROR,

VS.

The People of Hamilton County,
DEFENDANTS IN ERROR.

Agreed Case from Hamilton.

The County of Hamilton, where the Bank of the Republic is located, has not adopted the township organization system. In the year 1857, the President of the Bank, on the application of the County Assessor, listed the personal property of said bank at Fifty-thousand Dollars, and so reported it for taxation. The Assessor declined adopting this valuation, but applied directly to the State Auditor for further information. Under advices received from the Auditor, stating that the said bank had reported on the first Monday in April, 1857, $442,000 of "Capital Stock paid in and invested according to law," the Assessor proceeded to assess the bank at $442,000, and so entered it in his assessment lists.

On an application to be relieved from this assessment, the case now comes to this Court.

It is agreed that there were Public Stocks then deposited by the bank with the Auditor, as securities for its notes of issue, at the par value of $442,000, and of the market value, at the time of deposit, of $406,000; and that the amount of circulating notes issued thereon was $403,000; that the cash capital paid in to the bank was only $50,000; that the balance due upon the purchase of said stock by the bank, when procured,

was paid in the notes issued by the bank; and that there were no surplus profits nor reserved funds, nor other property belonging to the bank. The specie on hand was $13,000.

The main question for the adjudication of the Court, upon the case thus presented, is, *what was the taxable property of the Bank?* Other questions may incidentally arise, requiring the determination of the Court upon the validity of the assessment itself.

The recognition of some fixed and well-defined principles of taxation, which are of general application, is deemed more consistent with a system of free government, than the adoption of arbitrary and fitful expedients for raising revenue.

Taxation is the taking of private property for public use; and while it exacts money from individuals, as their share of a public burden, such exactions are the more cheerfully borne, when coupled with the assurance that they sustain a reasonable and just proportion to the ability of each one to bear them. To confirm this assurance, in establishing rules for assessment, it has been provided in nearly every State Constitution, that *each individual shall be taxed in proportion to the value of his property.*

The Constitution of the State of Illinois provides in Art. IX, §2, that

"The General Assembly shall provide for levying a Tax by *valuation*, "so that every person and *Corporation* shall pay a tax in proportion to "the *valuation of his or her property*; such value to be ascertained by "some person or persons to be elected or appointed in such manner as "the General Assembly shall direct, and not otherwise; but the General "Assembly shall have power to tax peddlers, auctioneers, brokers, "hawkers, merchants, commission merchants, showmen, jugglers, inn-"keepers, grocery-keepers, toll-bridges, and ferries, and persons using "and exercising franchises and privileges, in such manner as they shall "from time to time direct."

Aside from the "Capitation tax," (§ 1.) it is observed that the only departure from the leading rule above laid down, which is authorized by the Constitution, is in relation to certain *classes* specified in this section (2), and the permission granted to the General Assembly to extend and enlarge the "objects and subjects of taxation," beyond those definitely mentioned in this section, provided that this controlling principle of *equality in taxation* shall be preserved.

Section 6, Art. IX, reads as follows:

"The specification of the objects and subjects of taxation shall not "deprive the General Assembly of the power to require other objects "or subjects to be taxed in such a manner as may be *consistent with the "principles of taxation fixed in this constitution.*"

It will be discovered that the particular classes enumerated in section 2, consist either, 1st. of those whose ostensible property at any one time furnishes no sufficient criterion for determining the amount of property from which they may derive profit during the year: or, 2nd. those who from the nature of their occupation, require little capital in order to realize large profits, from the peculiar mode of employing it: or 3rd. those whose chief capital consists of, or is coupled with, that intangible species denominated "*wits*"; or finally, those who by special legislative grant, are permitted to enjoy certain rights forbidden to others, the value of which can only be ascertained by approximation.

In looking into the reason of the thing, and enquiring into the occasion for adopting a flexible rule in relation to these particular classes, it is apparent that, between these classes and the great mass of tax-payers, there is this plain distinction: that while the amount of property held and employed by individuals and corporations generally, may be singled out and estimated, or made the subject of easy and accurate computation; in the case of these exceptions there is little or nothing which renders such an estimate reliable. Hence arises the necessity of discriminating in regard to these particular classes and establishing a different basis upon which to tax them; since by adhering strictly to the rule of valuing the actual property found in their possession, they must either fail of contributing their fair and just proportion to the common burden, or they must be taxed beyond what they are able to bear.

The leading and controlling principle in the Constitution, which is to be applied, is this: that where individuals or corporations have an actual visible property, of readily ascertainable value, plainly and fairly representing their capital, then such property shall constitute the basis of their taxation, *according to its value*; in other cases, a reasonable estimate must be formed by enquiring from what equivalent amount of property, if held, certain assumed profits would arise.

In some instances this estimate may be reached without difficulty, by determining the "average value" through the year, as pointed out in the

statutes in the case of merchants, brokers, manufacturers. &c. (R. S. 1856, p. 925-926); while in others, the *bases* of estimate become so vague, that any approach to an accurate calculation would be mere conjecture. In the last mentioned instances, the tax degenerates into the form of licenses, the warrant for which system springs from this provision of the Constitution.

But whatever may be the aspect of irregularity which the various modes prescribed by the Legislature for taxing these different classes may assume, there is this distinguishable feature preserved between these classes and the main body of tax-payers, that whenever from the nature of the business or other peculiar circumstances, the "average value" of the property held can not be computed, the taxes which are imposed are in the nature of *specific taxes*, arrived at either by compounding or aggregating, or commuting, and paid as such to the County or State authorities, and not made proper objects or subjects for assessment or taxation, in the regular lists of the County or Township assessor.

It may be remarked that, if there be any departure from the strict requirements of the statutes, any discretion exercised in the assessment of property, it has ever been the policy, in making valuations, to *strike below* the real value of property, in order to encourage its possession and its open and active employment, rather than, by aggravating its value, to dispirit the owner, induce concealment, and clog the spirit of enterprise.

With regard to the assessment of *Corporations*, the Constitution is as explicit as in the case of individuals; in this particular they stand side by side with them. And by express statute (General Banking Act section 7.) associations formed under this Act are declared to be *Corporations*. So that under the Constitution, these Corporations are required only to "pay a tax in proportion to the valuation of their property," unless it can be shown that the General Assembly, under the authority granted them "to tax persons using and exercising franchises and privileges," have exercised that power, in the Act creating these Corporations, and assumed to tax them by some different rule therein prescribed.

On the presumption that there are no such special provisions, regulating the matter of taxation, as applied to these institutions, then like all other Corporations, each one must be taxed upon its "*capital actually paid in.*" Such is the rule of universal prevalence and recognition. So that the only enquiry to be instituted, in determining their assessment, is what is the amount of the "capital paid in?"

So strictly have the Courts adhered to this rule in matters of taxation, that they have refused to relax it, even where circumstances would seem to justify, if not demand it.

In a case which arose in New Jersey, where the legislature had *reduced* the capital stock of a corporation two-fifths of its original amount, the Courts held that only three-fifths of the original stock was taxable.

Gordon vs. New Brunswick Bank, 1 *Halsted*, 100.

In another case, in Kentucky, where the capital stock of a corporation had been *increased* by an authorized issue of *new* stock for a million of dollars; held that *none* of the new stock was taxable, even after the lapse of several years, unless it had been "paid in" to the corporation.

Commonwealth vs. Bank of Kentucky, 9 *B. Monroe* 1.

See also for further authorities to the same point:

Commonwealth vs. Commonwealth Bank, 22 *Pick.* 176.
People vs. Supervisors of Niagara, 4 *Hill.* 20.
State Bank vs. Brackenridge, 7 *Blackf.* 395.

And the chief or only question that seems to have arisen in the Courts on this subject, has been whether such corporations were allowed any *deduction* from their original "capital paid in," by reason of *losses* which they had sustained.

What then is the capital of these corporations? They trade in money. The amount invested in the business, and from which each derives a profit, is a fixed amount, and readily ascertained. It is the amount which the institution is worth. Whether consisting of real estate occupied for the purposes of its business, or machinery for conducting it, or currency, or coin for the redemption of its notes, or bills payable, or other securities representing money, or convertible into it, its capital is a constant quantity, which, when given, becomes the basis of taxation for the bank.

To find the determinate value of the property of such a Corporation, the thing sought is found in the amount of capital which has been diverted from other channels of business or trade, and found its way into this Corporation, and become identified with this particular enterprise. Such a valuation once ascertained, the capital thus enlisted becomes fairly chargeable, as against this corporation, with its proportion of the public burden of taxation, and is made to contribute *according to iis amount*, in the same manner as if the same capital were otherwise employed, as in shipping, or in lands. Such a valuation is satisfactory: it is just and proper, and affords no ground for complaint.

Before proceeding now to a more minute examination of the particular provisions of this general banking Act, in order to ascertain in what manner and to what extent, if at all, its provisions control or modify the principles of assessment and taxation in existence at the time of the passage of the Act; we shall be much aided in our investigations by considering first briefly the earlier method of establishing and regulating banking institutions, and enquiring into the main point of difference between that and the present method.

According to the old system, the amount of capital stock being once fixed, it was taken up by subscriptions, each share consisting of a certain sum, a certain proportion of which was paid into the institution or corporation, by instalments on each share from time to time, as calls were issued, to make up the capital required.

The specific term applicable in such cases to a corporation, by way of distinguishing its capital, is "*Stock*"; that upon which it trades and conducts its business; the foundation; the bottom upon which it rests.

It will be readily seen that according to the rate of payment of these shares of stock into the corporation, was the "*Capital stock paid in*" more or less increased; and in proportion as it was so paid in, would the taxable capital of such corporation be augmented; observing, also, that in the *same* proportion, would capital be *diminished* in the particular localities from which the capital paid in here was drawn. Thus, if on a fixed "capital stock" of $100,000, ten per cent was paid in, the amount for purposes of taxation at that time must be $10,000, and no more; and so on, increasing until the full amount of "capital stock" was paid in, when the taxable capital would be at its *maximum*.

This is the genuine "Capital Stock" of a Corporation: namely, the amount actually paid in and invested in the business, so that the corporation may enjoy the benefit of the investment, as it could not so long as such capital or money remained elsewhere. And it is in this sense that the term "capital stock" is employed in our statutes, in the revenue Act of Feb. 12, 1853, §§ XII. XXII. as applied to bridge companies and others.

But the mode of establishing and regulating banking institutions has been materially changed. Formerly, the greater the "Capital Stock paid in," the more perfect was considered the security of the public against loss; until the facilities with which stockholders could obtain

accommodations at their own counters, and the losses consequent upon an unguarded treasury, had demonstrated the insecurity of the system, and established the conviction that something more than *individual securities*, or "cash capital paid in," was necessary to insure safety to bill-holders, and good faith in bankers.

Hence the inauguration of the modern system of compelling a deposit of reliable *public* securities, of ample amount to meet the notes issued by the bank, to be kept in hands beyond the reach or control of the institution itself.

These securities only supply the place which was before occupied by individual credit. Their deposit is required *because* of the acknowledged insufficiency of *personal* securities, which were before regarded as reasonable, if not abundant protection against loss; and such is their *only* object.

Practically, the *credit* of a sound and honorable business man forms no small portion of his *capital*, even now; but not *therefore* is it liable to *taxation*. No more, are the *public* "stocks deposited," when that is the only office which they perform.

If the public only are benefited by the deposit of these stocks, and the banks submit to it only as a condition imposed, but productive of no corresponding advantage to them; shall they be deemed on that account the fitting objects for further exactions for the common good?

In devising the plan introduced into the State of Illinois by the banking Act, of 1851, it was obviously deemed of prime importance that the issues of the bank should be *secured* beyond all contingency. This was the controlling and governing principle. This being accomplished, and the state thereby furnished with a safe and reliable currency, the legislature were less regardful of the internal prosperity of the institutions from which it emanated; but were content to trust that to the management of those whose interests would be best subserved by a course which should establish public confidence.

Whatever may be thought of the policy of such a law, for the establishment of banking associations, certain it is, that under this Act, as originally passed, a corporation *might* be formed, with full power to issue notes, receive deposits, make discounts, and exercise generally all the powers incident to banking, without any considerable cash Capital to start upon, or any pledge that a single dollar would ever be redeemed

at the bank. There was nothing in the Act to prevent this until the amendment of 1857.

Previous to that time, any one who could engage the *loan* of public securities to the value of $50,000, long enough to pass them through the process necessary for converting them into currency, by depositing them with the State Auditor, in the manner prescribed, could be a banker, have a bank, and luxuriate in the reputation and prospects afforded thereby. The bonds or securities thus temporarily loaned for the occasion could be paid for in the notes issued, and the lender was satisfied, because the securities deposited were pledged for the ultimate redemption of the bills. The banker had only invested, as capital, an amount equal to the expenses involved in the manufacture of the plates, the purchase of paper, the printing, and affixing the signatures, and the bank had an actual tangible existence. The banker had drawn but little capital from any other branch of business. The amount of "actual cash capital paid in" was insignificant; yet it was all authorized by law, and no one could sustain loss but the banker himself.

Now at this point, we pause to enquire, what was the true ascertainable *capital* of such a bank? How should it be rated in the lists, among the lists of the banker's neighbors for taxation? Should we fix it at $50,000? It might perhaps be a proper penalty for his temerity; but every one knows that he had no such *capital* in the business—Unless he had other resources, he could not meet such a tax if he should try; and if he had such other resources, he must be eventually impoverished by his contributions to the revenue at such a rate as this. It is only a question of time. The stocks on deposit would not sell for enough at the close of the first year, to say nothing of any depreciation in their value, to redeem the bills, *pay the taxes*, and defray the expenses of setting the thing in motion and winding it up. Had the man been trading on $50,000? He had not handled it at all. But the last year's lender of the stocks still retained his original capital unimpaired, in legal currency, or exchanged it for its equivalent, and paid taxes upon it as before he parted with the stocks.

If *he* had procured the issue of the notes, on his own account, he must have paid the penalty; but by the employment of another, he escapes, and his agent must answer to the revenue.

Such *would have been* the practical working of the thing, in one view; and such the effect of the adoption of the rule to tax indiscriminately all

stocks on deposit with the Auditor, regardless of the circumstances of each particular case. It speaks of unmitigated hardship, and an unwarrantable oppression, in extorting money under the guise of taxation, without any representative value to support any such assessment.

Is it asked then, upon what basis shall such a bank be taxed? I revert to the general rule, and re-affirm the doctrine settled by the Constitution, and which cannot be disturbed: seek out the "*actual* capital paid in" to the business, and tax it accordingly, for beyond that you can not go. If there is little capital there, you can not go farther and tax that which has no existence.

Aside from the issue of notes, there is no necessary connection or relation, in theory or practice, in this system of banking, between the deposit of stocks, as securities, and the exercise of all the other banking powers. There is no necessary connection, nor is there any proportion between the stocks deposited and the "capital paid in," for the purposes of the business.

The bank may employ its capital in all the other departments of banking, and its business in these branches is limited only by its "capital paid in," without any reference to its Stocks deposited. Nor is its credit improved or affected in any degree, as a bank of deposit, by any amount of stocks on deposit with the Auditor; for they can not be reached by any creditor or depositor.

The deposit of stocks is made a pre-requisite for the *issue of notes* only; and the issue of notes is only limited by the deposit of stocks, up to the *maximum* fixed by the bank itself, without regard to the paid up capital of the bank, over and above the $50,000 now required. Beyond this, such issue is in no way dependent upon that capital; nor is it any test of what that capital may be.

Has a bank a "cash capital paid in" of $500,000, but deposits stocks only to the market value of $50,000; only $45,000 of circulating notes can be issued thereon. Beyond that, the Auditor can not issue, even upon the transfer of the full ~~$45,000~~—the residue of the bank's capital, to his hands in *coin*. (*Marine Bank vs. Auditor*, 14 *Ills.* 186.) But with a cash capital of $50,000, the notes may be issued without limit, so long as stocks are deposited to secure their redemption.

Assuming the *Stocks deposited, as a basis of taxation* in this instance, contrast the two cases now supposed, and place the assessment of $50,000

on an insignificant capital, against the assessment of $50,000 on a capital of *half a million*. The hardship and oppression in the former case becomes as palpable as the fraud upon the revenue in the other. Neither of these assessments is correct, because they have no foundation in reason nor in law.

If that rule shall prevail which measures the taxable capital of a bank by its stocks deposited with the Auditor, and by them alone, it involves the absurdity of ensuring the existence of capital where there is none, and of denying its presence where the proofs are patent to all.

Is the theory broached, that where the *capital paid in is less* than the stocks deposited, then the *stocks* shall control the assessment; but where the *stocks deposited are less* than the capital paid in, then the rule shall be relinquished and the assessment shall mount up to the capital, *in spite of the stocks?* It is an abandonment of every principle of taxation, and the whole business of assessment rests upon a very rotten foundation. A rule so erratic in its application, loses its authority as a monitor, and has little to commend it to general approbation.

Imagine the Auditor about to respond to sundry applications for information in regard to the taxable capitals of different banks, whose several quarterly reports present a state of facts vibrating between the two extremes supposed. Shall he in one instance report the "capital stock paid in and invested according to law," as exhibited in the *stocks deposited?* and shall he in another case report it as the "cash capital paid in?" or either, according to his fancy, that the revenue may be in proportion diminished or increased? Is there no rule but the whim of the State officer? Then the interests of these corporations, as well as the public revenue, are properly demanding some additional protection.

But we are now to proceed with the enquiry, whether the General Assembly, either in the Act of 1851, or any of its amendments, either expressly or by implication, have authorized the assessment of these corporations beyond their "actual capital paid in," or have designated either "stocks deposited," or any other specific property, as property belonging to the banks, and particularly liable to assessment.

The General Banking Act of 1851 is the *Charter* of these banking corporations, each and all of them of course adopting, with this, the revenue laws *then* in force; and by the special provisions of this Act, together with those statutes, must their legal rights and liabilities be determined, unless some alteration or amendment *legally binding on them* has since been made.

At the time of the adoption of this Act by the people in 1851, the revenue laws of the State contained no special provisions for the taxation of bank property. There were no banks to be taxed under any law. They were only called into existence by this General Act, under the new Constitution.

In the Act itself, therefore, must we look for the only regulations of assessment and taxation then applicable in the case.

The *sole* provision for this purpose in the Act, occurs in Section 10, which reads as follows: (R. S. 1856. p. 200, §135.)

"The shares of said Association shall be deemed personal property, "subject to taxation, and shall be transferable on the books of the Asso- "ciation, in such manner as may be agreed on in the Articles of Associa- "tion; and every person becoming a shareholder by such transfer, shall, "in proportion to his shares, succeed to all the rights and liabilities of "shareholders by whom the transfer was made. No change shall be "made in the Articles of Association, or of the shareholders or members "thereof, by which the right, remedies or securities of its existing credi- "tors shall be impaired. Such Association shall not be dissolved by the "death or insanity of any of the shareholders therein, when there is more "than one shareholder in such Association. Taxes shall be levied "on and paid by the corporation, and not upon the individual stock- "holders; *the value of the property to be ascertained annually by the "Bank Commissioners herein provided for;* and the rate of taxation "shall be the same as that required to be levied on other taxable "property by the revenue laws of the State."

According to this Section, the shares are made "personal property subject to taxation;" in the same manner that shares in corporations usually are. In the next place, "taxes shall be levied on and paid by the corporation" as a whole, and not upon the separate individuals composing it. This is a feature peculiar to corporations. Then the *valuation* of the entire property of the corporation is to be ascertained annually; and this is to be done *by certain Bank Commissioners* to be provided, and who are provided, in section 31.

These bank commissioners, in pursuing the investigations required of them in Sections 31 and 32, have ample opportunity for determining precisely what is the condition of the bank, and what its capital may be. From the evidence presented in each particular case, they are to decide, in any judicious and practicable manner, upon the true valuation of the property; and upon this valuation, taxes are to be levied at the same

rate, as "on other taxable property, by the revenue laws of the State."

This is a *virtual adoption of the general rule which prevails touching the valuation of all corporate property;* namely, that it shall be valued according to the *Capital paid in.* The Section contemplates no other rule. Very far is it, at any rate, from directing the Commissioners to value certain *specific* property at certain rates, or to include in their valuation that which was not to be found.

But it may be said that the legislature *has* authorized the Bank Commissioners to value the stocks deposited with the Auditor, and provided that those stocks shall enter into the valuation, as a part of the bank property subject to taxation.

Whatever sanction there may have been for this *once*, was found in the 20th Section of the Act of 1853, (R. S. 1856. p. 926. § 262.) "for the assessment of property." The Section reads as follows:

"SEC. XX. It shall be the duty of the President and Cashier of every bank or banking company that shall have been or may be hereafter incorporated by the laws of this State, and having the right to issue bills for circulation as money, to make out and return to the bank commissioners, in the month of May, annually, a written statement containing the average amount of notes and bills discounted or purchased by such bank or banking company, which amount shall include all the loans or discounts of such bank or banking company, whether originally made or renewed during the year next preceding the first of May aforesaid, or at any time previous, whether made on bills of exchange, notes, bonds, mortgages, or any other evidence of indebtedness, at their actual value in money, whether due previous to, during, or after, the period aforesaid, and on which such bank or banking company has, at any time, reserved or received, or is entitled to receive, any profit or other consideration whatever, either in the shape of interest, discount, exchange or otherwise. *Stocks deposited with the State Treasurer shall be valued at the rate at which they are deposited.* The bank commissioner shall proceed to ascertain the amount of the property valued in accordance with the provisions of this Act, and make return thereof to the Auditor, who shall report the same to the Clerk of the proper County, and said Clerk shall enter the same on the tax list for taxation."

Now, primarily, I observe, in regard to this section in the Revenue Act, that, while the legislature may have supposed that they were rendering a good service to the bank commissioners, and perhaps to the State, by this enactment, nothing is more certain than that the legislature *have*

no power to compel the banks organized under the Act of 1851 to return any such statements as are here contemplated. They are utterly powerless to effect any such object. The banks *may* accede to the proposition if they choose, by way of *accommodation;* but such compliance is optional, and they may follow their own inclination in the matter. There is no penalty that can reach them for refusal.

And as regards the acceptance of any such statements by the commissioners, when rendered, it is simply harmless. They are at liberty to glean from them such facts as they may judge to be of service, in fixing their valuations, or they may disregard them altogether.

So long as any statute provisions, made *since* the banking Act of 1851 went into effect, do not encroach upon the rights of the banks acquired under that Act, the legislature are welcome to mend and patch their own work at pleasure.

But when they assume to invade the vested rights of corporations, unsolicited, and impose upon them terms not contemplated in their *charter*, their acts become void, and are of no account when tested in law.

It will not be denied that the Act of 1851, is the *Charter* of those banking associations formed under it.

Then it has been repeatedly decided that a bank charter is a contract between the State and the Stockholders, which is not to be impaired by any statute to which they are strangers.

State vs. Berry, 2 *Harr. N. J. Rep.* 80.
People vs. Marshall. 1 *Gil. Ills. Rep*, 672.
State Bank of Illinois vs. People. 4 *Scam. Ills. Rep.* 303, 305.
County of Richland vs. County of Lawrence, 12 *Ills.* 1.
Longwood vs. Huntsville Bank, *Miner* 23.
State vs. Tombeckbee Bank, 2 *Stew.* 30.

So also, that rights legally vested in corporations can not be controlled or destroyed by any subsequent statute, unless power to that effect has been reserved in the Act of incorporation.

Wales vs. Stetson, 2 *Mass.* 146.
People vs. Manhattan Company, 9 *Wend.* 351, 392, 393.
State Bank of Ohio vs. Knoop, 16 *Howard*, 359, 380.

In this General Banking Act *there is no such power reserved.* So that, aside from any remedial statutes which might be applicable to the case, these banking associations may successfully resist any attempted invasion of their rights, by any such statute as the one now under consideration.

This is a "subsequent statute" *respecting the Revenue;* and it has no power, by the expansion or inflation of any particular section of the Act of 1851, to *create* a species of property and make it taxable, as against these corporation which was not clearly taxable before. What the law can not do directly, it can not do indirectly.

Charters must be construed by the law *as it stood when they were granted.*

Coke, 2 *Inst.* 282.

People vs. Manhattan Company, 9 *Wend.* 351, 359.

Now, if such be the construction given to section 20 of the Revenue Act of 1853, that all stocks deposited by the banks are to be taxed *absolutely*, at the rate of valuation at which they are deposited, as the *minimum* capital of the several banks respectively; then the Courts have only to pronounce it null and void.

The Act of 1851 contemplated no such system of valuation. That Act simply required the Commissioners to *value* the bank property, *at whatever they should find it to be.*

This section of the Revenue Act, in effect, takes the *valuation of bank property from the hands of the Commissioners*, as provided in the Act of 1851, and not only *designates certain assumed property as liable to taxation*, but virtually *dictates the valuation of it;* thus leaving the Commissioners, so far as any *judicial power in valuation* is to be exercised, but mere machines—the mouth-pieces of the Auditor or Legislature.

It had already been decided by the Supreme Court, in 1852, (*Marine Bank vs. Auditor*, 14 *Ills.* 185,) that the stocks deposited were *not the property of the bank that deposited them;* but that the legal title was in the Auditor, and the bank could exercise no control over them.

This section, therefore, is in direct violation of the provisions of Section 10 of the Act of 1851, and cannot stand.

Besides, the law requires no bank to have a capital invested in the business, equal to the amount of stocks deposited as securities for its issues. Nor was there any evidence before the legislature that any bank had, or would have, such capital invested.

And any statute that prescribes, in so many terms, that any individual, or class, shall be taxed on a *valuation* of property *greater* than is known to belong to that individual or class, is at variance with the Constitution and it must be so held.

Then if such be the construction given to this section, such must be its fate.

There may be, however, a different meaning given it, in which sense, perhaps it may be made to stand, if at all.

It may be presumed that the bank commissioners, in estimating the actual value of the bank property, *might* have occasion to enquire at what rate they shall bring into the account the stocks deposited. That may be one step in the process—one of the *data* furnished in the quarterly report of the bank, by which they arrive at the actual capital.

In such a case, it becomes an important enquiry, as to what portion of the capital is invested in the stocks? Then section 20 settles the *rate of valuation* of these stocks, so that they shall not be disturbed by the fluctuations of the stock-market.

Thus expounded, the clause loses its objectionable features, and may be construed as designed to aid the commissioners in their investigations, instead of invading their prerogatives, or *creating* property for taxation.

In the examination of this 20th section, I have proceeded on the assumption that it was still in force. It, however, only survived one other session of the legislature, when it was repealed by the 7th section of the Amendatory Act of 1857.

The design has been to show, that *at no time* have the stocks on deposit been properly and legally taxable: and that, if any authority has heretofore existed seeking to render them taxable, such authority rested upon an insecure basis, and could not have been sustained.

Hence, if the Auditor or assessing officer has, in this instance, taken the suggestion from such a source, (which is quite probable,) then it has been without a full understanding of what the law required, or with a misapprehension of the intention of the legislature.

The Amendment of Feb. 14th, 1857, comes next in order for consideration. This introduces some new features into the business of taxing bank property; since under this amendment, as it is alleged, the present assessment was made, which the Court is called upon to review.

The case in hand will involve the more particular examination of the *sixth*, *seventh*, *eighth* and *ninth* sections of this Amendment.

And for the purpose of seeking to restore some apparent dislocations in the subject, it is proposed to vary the arrangement of these several sections, from the order given in the Session Laws. This license is not

without warrant; and is perhaps abundantly justified, from the fact of the obvious blunder occurring in the 9th Section, which designates as the *first* section that which can only be the *eighth*.

Now by so transposing these sections, that the 8th and 9th shall occupy the places of the 6th and 7th, respectively, letting the other two follow in their order, the connection of the whole will be better preserved, the succession of subjects be more natural, and the object of this portion of the Act, taken as a whole, will become more intelligible.

Assuming this liberty, for the occasion, they will then read in order as follows:

"SEC. 8. The sixth section of an Act to establish a general system "of Banking, shall be so construed as to require any bank or association "established under said Act to have a *bona fide* cash capital of at least "Fifty Thousand Dollars actually paid in in good faith for the purpose of "remaining in such bank or association as capital; and the Auditor shall "satisfy himself of such fact before he shall issue any circulating notes "or bills to any such bank or association, and for this purpose he is "authorized to examine any and all officers, stockholders, agents and "employees of such bank or association under oath, and to take all such "measures as he may deem necessary to determine that fact. The evi- "dence required by this section shall be in writing, and shall be filed "in the Auditor's office.

"SEC. 9. No more circulating notes shall be issued under any cir- "cumstances to any bank or association organized under said Act, until "the Auditor shall be satisfied that such bank or association has such "actual capital as is required in the first (*eighth*) section of this Act.

"SEC. 6. The capital stock of every bank or banking association "paid in or secured to be paid in, except so much thereof as is invested "in real estate, (which shall be taxed as real estate as herein provided,) "together with the surplus profits or reserved funds, and also the real "estate of every such company, shall be listed by the President or "Cashier thereof, and assessed and taxed in the same manner as the "other personal and real estate of the county and town in which such "bank or banking association is located.

"SEC. 7. Sections 20 and 21 of 'an Act for the assessment of "property,' approved Feb'y 12, 1853, and sections 20 and 21 of 'an "Act for the assessment of property and the collection of taxes in "counties adopting the township organization law,' approved Feb'y 12, "1853, are hereby repealed."

It is observed here, first, that the legislature are still devoted to the illumination of the "Capital-Stock" question. They had already reviewed their labors in this field once, by an amendment at the Session of 1853; yet they seem little satisfied with their work then, and are now at it again.

Here it may be profitable to notice the occasion for their action on this subject in 1853, and what was then done.

The 6th section of the General Banking Act prescribes that "the "*aggregate amount of capital stock* of any such association shall not be "less than fifty thousand dollars." The 34th section likewise provides that the quarterly statement of the affairs of the bank, to be transmitted to the Auditor, shall exhibit "the amount of *Capital stock* of the asso- "ciation or individual banker, paid in and invested according to law."

Very soon after the law went into operation, it became necessary to define the term, "capital stock," in order to know how to comply with the provisions of the Act, in contributing the necessary capital, and also to render the quarterly statement intelligible.

For if the term was to be construed as meaning *cash capital*, (as there was good reason to believe it did,) it became a serious puzzle to many who were entertaining notions of banking, but had no "fifty thousand dollars" *in cash* to "pay in and invest according to law," as to how this obstacle should be surmounted.

Finally, inasmuch as the Act itself was silent upon the matter of *cash capital*, it was decided by the Auditor, *pro hac vice*, that the *securities* deposited with him under the law, should be held to be "capital stock" within the intent and meaning of the Act; and that the "capital stock" required by the Act, should be measured by the amount of *securities deposited.*

So to quiet all doubt or apprehension on the subject, the matter was set at rest, at the very next session of the legislature, by the following Amendment:

"Sec. 1. *Be it enacted, &c.* That the Act to which this is supple- "mentary shall be so construed that no person or persons shall become "incorporated under the said Act, until he, she, or they shall first have "deposited with the Auditor, United States or State Stocks, as required "by said Act, so that the *capital stock* of the said incorporation shall "amount *in such United States Stocks, or State Stocks*, at the rate and "value fixed by said Act, to the sum of Fifty Thousand Dollars; and "at no period during the existence of said Bank, shall the *capital stock* "of the same, *in stocks deposited as aforesaid*, be less than the sum of "Fifty Thousand Dollars."

No *cash capital* was yet required for banking. The business might proceed as before; each bank to take care of its own issues as it best could. The legislature probably reasoned that, after providing a sound currency for the public, the success and reputation of each association might be safely committed to the care of those immediately interested in sustaining it.

But it seems that another four years' experiment had wrought some changes in their views. Some of these concerns had proved deficient in bottom, and enjoyed but a brief history. Others were on the road to liquidation. It was feared that a feeling of distrust would be engendered, and the currency of the State get into disrepute.

So again in 1857, the legislature, after surveying the field, recur to the old Act of 1851, and conclude that, a *cash capital* will impart strength and confidence; and since the language in Section VI. of the Act will support such a construction, they proceed further to comment upon Section VI, and demand henceforth a BONA FIDE *cash capital of fifty thousand dollars*, or no bank at all.

Such is section *eight* of the Amendment of 1857; followed up good and strong by requiring the Auditor, in the same section, to take good care, and see to it that this "*actual capital*" should be forthcoming.

Their attention is also attracted to the matter of *taxation*. It was naturally suggested by the *new* provision in Section 8. Each bank must now have "a *bona fide cash capital* of at least fifty thousand dollars "actually paid in in good faith for the purpose of remaining in as capital." The language could not well be stronger. There is no escaping from it. The *cash* only will answer the purpose; and so much "at least" they must have.

Here now is a true reliable "*capital*" in these corporations; and corporations are taxable on their "capital paid in." Such is the rule. Of course it must continue to prevail in the case of these corporations. And accordingly it is so laid down in Section 6 of this amendment, reaffirming the time-worn rule. "The capital stock of every bank or banking association *paid in or secured to be paid in*, shall be listed, and assessed, and taxed in the same manner as the other personal and real estate of the county and town." It is claimed that there is no change here. It remains *in principle* the same as under the Act of 1851.

At this juncture the legislature remember the Section 20 of the Revenue Act of 1853, already alluded to—at best, but an awkward mode of reaching the value of bank property; and perhaps they might have had

an inkling of its suspicious character. So they wipe it out by the 7th Section of the Amendment.

Such seems to be the plain English of the Amendment of Feb'y 14th, 1857. It is an interpretation consistent with reason, and adapted to the business which the legislature took in hand.

There is one feature, however, in the *method* indicated for assessing bank property in section 6, which demands a more especial notice. It is that of committing the valuation of the property *to the hands of the county or township assessors*, instead of the bank commissioners, as prescribed in the General Banking Act of 1851.

My conviction is strong that, in this provision, the legislature have exceeded their powers. The banks have a security in the wisdom and capacity of the officers designated for this duty, in the original Act, which is there guarantied to them; and it is a vested right which they can not be made to relinquish. The legislature can not divest them of it.

The pretence that the banks would be equally well protected in their rights under the new appointment, is of no account. Neither the Legislature nor even the Courts can decide this question for them; and there can be no presumption in the case.

If this be so, this provision must be abandoned to its fate, and *this assessment be held void*, for the reason that the assessing officer had no power to make it, and no jurisdiction in the case.

Having thus gone over the field occupied by the several statute provisions touching the assessment of bank property, the conclusion appears to be justified, that there is no warrant nor authority found in the Statutes for including the stocks deposited with the Auditor, in the valuation of the property of each bank.

Not only is the Act of 1851, and every subsequent Amendment of that Act altogether *silent* upon the subject; but the Amendment of 1857 expressly declares *what shall be* the taxable property of the banks, and that includes no mention of the "stocks."

Now the designation, in a statute, of *certain* property as taxable in a particular case, which is at the time the special subject of legislation, *for that purpose*, implies the release or exclusion of all other property which might be liable to be included. More especially is this true, when such other property, if it had ever been held liable,

must have been at the time in the contemplation of the legislature, and yet they carefully avoided including it. Besides, they *repeal* at the same time a *prior* statute which, it is alleged, compelled in terms the taxation of these stocks.

Could anything show more clearly than this, the *intention* of the legislature in regard to the taxable nature of these stocks?

The fact is, that the rule as it now stands, under the Amendment of 1857, by this construction, holds fast the principle avowed in the Constitution; and this Court will not hunt after props to sustain any other interpretation which is in conflict with that.

If any one pretends that the Auditor or assessor may, in the exercise of his judgment or discretion, as a judicial officer, decide that the stocks deposited shall be deemed personal property of the bank, and tax them accordingly; it is safe to remind him that neither of those officers is by law substituted for the legislature.

If it is alleged by way of apology for the Auditor or Assessor, that the quarterly report of the Bank for the first Monday of April, 1857, was binding upon the Bank, and was sufficient evidence to warrant the assessment as made; it is answered, that report was made in terms as required by the Amendment of 1853, which gave it its true import, and by it that statement must be construed.

That Amendment made the "stocks deposited" the measure of the "Capital stock paid in and invested according to law," and there was no alternative but to so report it; the only object of that particular item in the report being to exhibit the amount of stocks deposited by the bank. The "actual cash Capital paid in" was quite another thing. And the Auditor or Assessor must have so understood it.

The Amendment of 1857, § VI. had provided that, "the Capital "stock of every bank paid in, or secured to be paid in, except so much "thereof as is invested in real estate, shall be listed, assessed, and "taxed," &c.

Now it is insisted that "the capital stock paid in," as it occurs in this Section VI, takes its meaning from, and is to be construed in connection with, and as synonymous with, the language "cash capital paid in," as found in the Section numbered VIII. in the same Amendatory Act; that it can have no other meaning, and that this "Capital Stock paid in, or secured to be paid in," in this § VI. does not and can not mean the stocks deposited with the Auditor, as it does so mean in the quarterly statement of April, reported by the Auditor to the Assessor.

must have been at the time in the contemplation of the legislature, and yet they carefully avoided including it. Besides, they *repeal* at the same time a *prior* statute which, it is alleged, compelled in terms the taxation of these stocks.

Could anything show more clearly than this, the *intention* of the legislature in regard to the taxable nature of these stocks?

The fact is, that the rule as it now stands, under the Amendment of 1857, by this construction, holds fast the principle avowed in the Constitution; and this Court will not hunt after props to sustain any other interpretation which is in conflict with that.

If any one pretends that the Auditor or assessor may, in the exercise of his judgment or discretion, as a judicial officer, decide that the stocks deposited shall be deemed personal property of the bank, and tax them accordingly; it is safe to remind him that neither of those officers is by law substituted for the legislature.

If it is alleged by way of apology for the Auditor or Assessor, that the quarterly report of the Bank for the first Monday of April, 1857, was binding upon the Bank, and was sufficient evidence to warrant the assessment as made; it is answered, that report was made in terms as required by the Amendment of 1853, which gave it its true import, and by it that statement must be construed.

That Amendment made the "stocks deposited" the measure of the "Capital stock paid in and invested according to law," and there was no alternative but to so report it; the only object of that particular item in the report being to exhibit the amount of stocks deposited by the bank. The "actual cash Capital paid in" was quite another thing. And the Auditor or Assessor must have so understood it.

The Amendment of 1857, § VI. had provided that, "the Capital "stock of every bank paid in, or secured to be paid in, except so much "thereof as is invested in real estate, shall be listed, assessed, and "taxed," &c.

Now it is insisted that "the capital stock paid in," as it occurs in this Section VI, takes its meaning from, and is to be construed in connection with, and as synonymous with, the language "cash capital paid in," as found in the Section numbered VIII. in the same Amendatory Act; that it can have no other meaning, and that this "Capital Stock paid in, or secured to be paid in," in this § VI. does not and can not mean the stocks deposited with the Auditor, as it does so mean in the quarterly statement of April, reported by the Auditor to the Assessor.

There are insuperable difficulties in attempting to give such a construction to the language employed in section 6, as to make "the *capital stock paid in or secured to be paid in*," which is to be assessed and taxed, signify "*stocks deposited.*"

If such is the construction intended, then how are "stocks deposited," "*secured to be paid in*" to the Auditor? Is there any provision in the Act of 1851, or in any subsequent amendment, pointing out the manner in which "stocks deposited," or to be deposited, *may be* "*secured to be paid in*" or secured to be deposited? Does the Auditor accept any *securities* for the future payment in of "stocks deposited?" If so, what provision is made for these *securities for securities*, and what office do they perform? Can any one discover? It is the first intimation that the Auditor has anything to do with any *pledges* to pay stock into his hands, or that any such pledges offered would receive any attention.

Again, if the "*capital stock* paid in or secured to be paid in, except so much thereof as is invested in real estate," &c., which is to be "assessed and taxed," according to Section 6, means "*stocks deposited*," then how are "stocks deposited" to be "*invested in real estate;*" for this section obviously contemplates that the "capital stock" which is to be listed, assessed and taxed, *may* be so "invested?" How are the "stocks deposited" to be procured from the Auditor to be so "invested?" Or are the "stocks deposited" to be "invested in real estate" *before* they are "deposited?"

These things are simply ridiculous. Any attempt to construe the "*capital stock*" of the bank, designated in this section 6 for assessment and taxation, into "*stocks deposited*," is involved in inextricable difficulties, and is absurd upon its face.

There is no escaping the conclusion; it is forced upon us. Whatever rule or doctrine *may* have prevailed in the minds of some upon this subject before the passage of this Amendment of 1857, there is no longer any room for doubt in the case.

It is the "*capital stock paid in, or secured to be paid in*" which is made the basis of assessment and taxation. It is the "*bona fide cash* "*capital* of at least Fifty thousand dollars *actually paid in in good faith* "for the purpose of remaining in as *capital*," that is to "be assessed and taxed." It is capital of such a kind, and in such a shape, that it *may be* "*invested in real estate*," at pleasure, when deemed desirable by the bank. It is the "*actual capital*" which this amendment requires

the Auditor to direct his especial attention to, and see and "*be satisfied*" that each bank has it "paid in in good faith for the purpose of remaining in as capital," and that he shall have the "evidences in writing," of the fact, filed in his office, to satisfy others that it is so.

If *no other* "capital" was required or contemplated in this amendment, than the "stocks deposited," and these "stocks deposited" are the "capital stock paid in and invested according to law," why make such an ado and parade over the "evidences in writing," and the "examination of any and all officers under oath, when the Auditor had the best evidence that the "capital stock" *was* paid in, after having himself delivered the "stocks deposited" into the hands of the State Treasurer? Could he have any better evidence than was already his? The enquiry still recurs, where is the warrant or authority for taxing the "Stocks deposited?"

It has been said that, so long as the *Stocks draw interest*, and the banks receive the benefit of this, the Stocks must be considered the property of the bank for purposes of taxation, on the principle that he shall be deemed the owner who enjoys the profits.

But the Stocks on deposit do not all pay interest. The interest Bonds of Illinois pay none, and are still received on deposit.

When interest is paid, it is an *incident* growing out of the circumstances of the case, with which the bank has nothing to do, except to receive it, unless reserved by the Auditor to supply deficiencies in depreciation. The fact that interest accrues and is paid, shows that the Stocks are not dead property, but have a value, if the bank could only use them to advantage; but it is not in consequence of their employment in the legitimate business of banking, but in spite of it.

Again, the interest paid on the Stocks, being the *only property* in them, in any sense of the term, which does belong to the bank; it is, according to the principle assumed, only this *interest, so payable*, that would be taxable, and not the stocks themselves. When this is paid over to the bank, then, if it is *retained in the business*, it does become taxable under the distinctive head of "surplus profits or reserved funds," as by the amendment of 1857, § 6, but not otherwise.

An interest in expectancy is not taxable, any more than a pension, or a life insurance policy, or a salary.

The Supreme Court have declared that it was not the design of the Constitution to tax incomes.

Ills. Central R. R. Company vs. County of McLean, 17 *Ills.*, 239.

It has also been determined in the State of New York, that surplus earnings and profits to Corporations, over and above the amount *retained as permanent capital*, are not liable to taxation.

Bank of Utica vs. City of Utica, 4 *Paige*, 399.
Mutual Ins. Company, of Buffalo, vs. Supervisors of Erie. 4 *Comst.* 442.

And in all the excavations to find taxable property, the Statute authority is yet to be discovered in this country, for taxing incomes and surplus profits and earnings, unless first converted into capital which promises a profit.

But if it is still insisted, that these "stocks deposited" are *personal property belonging to the banks* and taxable as such, let a *test* be applied. Can a creditor reach them by final process, or attachment? Will a decree in Chancery remove them from the hands of the Treasurer, to answer a claim against the Bank, before the notes of issue are returned? It is apprehended that all efforts in that direction would meet with small encouragement.

Let it be proposed to make *sale* of the entire property, rights, credits, coin, cash capital, and everything pertaining to the institution, including the "stocks deposited," subject to the liabilities on the *outstanding circulation*, precisely as the Bank stands; is it a fair measure of the price of the concern, to fix the valuation at the *market value of the "stocks deposited?"* Who could be found so simple as to purchase on such a valuation? And yet, if the institution is *taxed* on such a basis, it surely should represent that sum.

Whatever view may be taken of this question, every test applied but establishes more firmly the conviction, which both reason and the Statutes justify, that these corporations are taxable, like other corporations and individuals, upon what they have, and not upon what they have not. The "capital paid in" proclaims the true value; and law and justice unite in saying, let them be taxed upon that.

The argument has proceeded mainly upon the supposition, that all the Amendments to the Act of 1851 had the authority of *Constitutional law* to support them.

The design has been to give them such a construction, that if, in the judgment of the Court, they may be rescued from the charges of being

repugnant to the Constitution, and in conflict with the rights of these corporations, they may be allowed to stand.

But any subsequent statute which invades either the property or rights of these banking associations, as established under this General Act, is an attempt to *vary the contract* originally entered into between them and the State, without their consent, and must be suppressed. If the legislature may so change it in *one* particular, there is no limit to this license; and the good faith demanded by law from individuals, is set at naught by the power that prescribes it to others.

This cannot be permitted. The impotency of a legislature in all such attempts as this, has been often pronounced, and is as well settled as any principle in law.

People vs. Manhattan Company, 9 *Wend.* 351.
State Bank of Ohio vs. Knoop, 16 *Howard* 369.

Besides, if the legislature of Illinois would give the authority of law to an enactment which assumes to regulate, in any way, the powers of banking corporations, something more is needed than the will of the General Assembly and the approval of the Executive; and without it any Act, or Amendment of an Act is nugatory.

The Constitution of the State has not left this matter in darkness; but has pointed out clearly the course to be pursued.

It has expressly provided, Art. X. § 5, that "no Act of the General "Assembly, authorizing corporations or associations with banking "powers, shall go into effect, or in any manner be in force, unless the "same shall be submitted to the people at the general election next suc- "ceeding the passage of the same, and be approved by a majority of "all the votes cast at such election for and against such law."

Let it not be pretended, that this provision contemplates the assent of the people to a *General Law*; but the Legislature may *afterwards deal* with it, and mold it at their pleasure. The design of the Constitution would thus be utterly defeated.

The same policy would submit one section and withold another, or *Lecomptonize* it altogether. It would be an easy matter to gain assent to a very wholesome statute, and afterwards convert it into a system of oppression in spite of the People; and Constitutions would thus prove very weak and unnecessary things.

If the General Assembly would alter or amend the provisions of the Act of 1851, in any manner fundamentally affecting the rights either of these banking Corporations or the People of this State, there is but one course to be pursued.

Whenever the *People* shall have sanctioned such an Act, and the *banks consented* to the same; it shall have the force and validity of law. Until that time, the General Banking Act of 1851 shall stand as the law of these Corporations, affected only by such remedial statutes and police regulations as shall be deemed expedient and necessary to protect rights and enforce remedies.

H. T. STEELE,
Of Counsel for Plaintiff in Error.

[8552-42]

Copy of
writ of error

This Copy of the writ
of Error is deposited
with Clerk of Supreme
Court of Illinois -
for the defendant
in Error

D. Lyle Dickey
Atty for
Plff in error

To be left on file in the
Supr. Court of Illinois

United States of America, ss:

THE PRESIDENT OF THE UNITED STATES,

To the Honorable the Judges of the Supreme Court of the State of Illinois

Seal

greeting:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Illinois

before you, or some of you, being the highest Court of Law or Equity of the said State in which a decision could be had in the said suit between The Bank of Republic and the County of Hamilton

tion the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Bank of the Republic

as by complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the **Supreme Court of the United States**, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

WITNESS, the Honorable Roger B. Taney Chief Justice of the said Supreme Court, the first monday of December in the year of our Lord one thousand eight hundred and fifty nine. —

Sgnd — Wm. Thos. Carroll

Clerk of the Supreme Court of the United States.

ALLOWED BY Sgnd — S. D. Caton

Chief Justice Sup. Court of the State of Illinois —

— day of July 1860.

Chicago 29th Sept
59

My Dear Sir

Judge Reese writes to me that the opinion in the case of Bank of Republic vs Hamilton County has been sent to you—please let me have that, and any other opinions you may have received as soon as you conveniently can. Hurrah for John McClernand—Egypt is in glory again

Yours Truly
D Davis

N Johnston Esqr

[8502-46]

E. Peck
Chicago

7 Oct. 59—

Opinion—
Reese and
Arguments
of Freeman &
Black Smith
Esqrs—

[8502-47]

Chicago. Ills.
Wednesday Sept. 22nd 1858.

To The Clerk of Supreme Court.
1st Division. Mt. Vernon. Ills. } Dr Sir.

Herewith enclosed please find case of "Bank of the Republic vs. People of Hamilton County" for the files in your office.

We send also five copies of printed abstracts, as required by ~~law~~ rules of court.

Please acknowledge receipt of the package on arrival, and state the number of case on your docket for the November Term.

We enclose Five Dollars, Clerks Fees for the entry of suit. Which is the amount paid in our Division.

Respectfully Yours.
Rich & Steele.
P.O. Box No. 528.

October 1. 58
Acknowledged and
say [illegible]
Copies Abstracts

P. 1

Supreme Court of the State of Illinois.

The Bank of the Republic,
PLAINTIFF IN ERROR,

VS.

The People of Hamilton County,
DEFENDANTS IN ERROR.

Agreed Case from Hamilton.

This case was brought into the Circuit Court of Hamilton County by appeal from the County Court of Hamilton County, in the matter of the application by the Plaintiff to said County Court, for a reduction of the Assessment of the property of said Plaintiff, as made by the Assessor of Hamilton County for the year 1857, which said application was refused by said County Court at the December Term thereof, A. D. 1857.

The said cause came on for trial and was heard before the Honorable EDWIN BEECHER, Circuit Judge, at the May Term of the Circuit Court of Hamilton County, A. D. 1858, and was tried by the said Court without the intervention of a jury.

On the trial of the said cause, it appeared in evidence from the assessment lists made out by the County Assessor of Hamilton County for the year 1857, and in the possession of the County Clerk of said County, that the valuation of the personal property of the Plaintiff for said year was Four Hundred and Forty Two Thousand dollars; that the said valuation was entered in said lists in the column headed "Bonds,
2 Stocks, &c.," and that there was no noting on the said lists, of the words "by Assessor," opposite the name of the Plaintiff, or in any way connected therewith.

It further appeared from the testimony of WILLIAM RICKCORDS, that he was agent for the Plaintiff, and resided in the precinct of McLeansboro, in the County of Hamilton, where the said Bank of the Republic is located; that the County Assessor called upon the said agent some time in the month of June or July, 1857, for a statement of the property of Plaintiff for taxation; that the President and Cashier of said Bank were at that time absent from said County; that said assessor then stated to said agent that the list of property required of the Plain-

tiff would be furnished in time for the purpose of assessment, if supplied by the first day of September thereafter, and that said agent engaged to procure such statement by that time; that said assessor did not at any time leave with said agent, or at the office of the Plaintiff, any written or printed notice requiring Plaintiff to make out for the said assessor a statement of the property required to be listed by the said Bank, nor any written or printed blank for the statement required of said Bank; that on the nineteenth day of August, A. D. 1857, the said agent deposited in the Post Office, at Dwight, in Livingston County, in the State of Illinois, a statement of the property of said Bank for taxation, as listed and signed by Charles H. Rockwell, the President of said Bank; that said list, so made out, stated the capital stock of said Bank
3 paid in, at Fifty Thousand Dollars; that said list was directed to "S. A. Martin, County Clerk of Hamilton County, Illinois;" that a letter was enclosed with said list, requesting said County Clerk to hand the same to the Assessor of said County.

It also appeared in evidence, by the testimony of JOHN McELVAIN, that said McElvain was Deputy Clerk of said County of Hamilton, in the months of August and September, A. D. 1857; that while performing the duties of the office of County Clerk of said County, he received through the Post Office a letter enclosing a statement purporting to be a list of the property of the Bank of the Republic, for taxation; that there was also a special request accompanying said list, that it might be handed to the Assessor of Hamilton County; that the said letter arrived by ordinary course of mail; that said McElvain did not see the said assessor for some days after the arrival of said list; that he informed said assessor, on the first opportunity, and before said assessor had completed his assessment lists for said year, of the arrival of said statement at his office, and requested said assessor to call at his office and receive the same; that he then informed the said assessor of the contents of said statement so received, and that said assessor stated that he would enquire of the Auditor for further information, and did not at any time apply for or procure the said statement from said Clerk's Office for use or examination.

It also further appeared in evidence, from the testimony of JOB STANDIFER, that said Standifer was the Treasurer and Assessor of
4 the County of Hamilton for the year 1857; that he resided at that time about nine miles from McLeansboro, the County seat of said County; that he called on William Rickcords, the agent for the Bank of the Republic, at McLeansboro, in said County, some time in the month of May, A. D. 1857, for a statement of the taxable property of said Bank, for said year; that he stated to said agent, that said list might be handed in

at any time by the first day of September of that year; that he left with said agent no written or printed notice, nor blank, to make out a statement of the property of said Bank required to be listed; and that he left no such notice or blank at the place of business of said Bank or elsewhere, and that he did not at any time make any note in any book or memorandum, of the date of leaving any such notice, or the name of the Bank so required to list; that said assessor finished his round of assessing through the County for said year, on the eleventh day of September; that before proceeding to make up and draw off his lists of assessments for said year, he was informed by Mr. McElvain, Deputy Clerk of said County, that he had received a statement of the property of the Bank of the Republic; that said McElvain told him that the amount reported in said statement was Fifty Thousand Dollars; that said assessor never saw said statement; that said agent, Rickcords, was not in said County when said assessor heard of the arrival of said statement, nor until after said assessor had closed his books of assessment for said year; that on the fifteenth day of September, A. D. 1857, and after said assessor was informed of the arrival of said statement, the said assessor addressed a letter to the Auditor of the State of Illinois, enquiring in relation to the amount of taxable property of said Bank, and that said Auditor replied in the following letter, to wit:

"STATE OF ILLINOIS.

"AUDITOR'S OFFICE, Springfield, Sept. 19, 1857.

"JOB STANDIFER, ESQ.:

"Dear Sir:—Your note of the 15th inst. requesting "information in regard to the taxable property of the Banks located at "McLeansboro, is at hand. The only means of information that I pos- "sess in relation to the matter are the quarterly statements of affairs on "file in this office, for the quarter ending first Monday in April, 1857, "from which the following are correct abstracts, viz:

"E. I. TINKHAM & Co.'s BANK.

"Capital stock paid in and invested according to law, - - $150,000

"HAMILTON COUNTY BANK.

"Capital stock paid in and invested according to law, - - $202,500

"BANK OF THE REPUBLIC.

"Capital stock paid in and invested according to law, - - $442,000

"The above statements are sworn to by the officers of the several "banks. The law of last session also makes them liable to taxation

"upon their surplus profits or reserved funds, but I have no means of "ascertaining the amount of the latter item.

"Respectfully Yours,

"JESSE K. DUBOIS, *Auditor.*"

6 It also appeared in evidence, from the testimony of the said Standifer, that some time during the month of May, A. D. 1857, he received through the hands of the County Clerk of Hamilton County, a paper purporting to be a circular from the Auditor of the State of Illinois, of which the following is a copy, to wit:

"AUDITOR'S OFFICE,

"SPRINGFIELD, ILLINOIS, May 14th, 1857.

"SIR:—By the 6th section of an act of the Legislature of the "State of Illinois, entitled 'An act to amend an act to establish a gene- "ral system of Banking,' passed Feb'y 16th, 1851, and the act amenda- "tory thereto, approved Feb'y 14th, 1857, it is provided 'that the capi- "'tal stock of every Bank or banking association, paid in or secured to "'be paid in, except so much thereof as is invested in real estate, which "'shall be taxed as real estate as herein provided, together with the sur- "'plus profits or reserved funds, and also the real estate of every such "'company, *shall be listed by the President or Cashier thereof*, and *as-* "'*sessed* and taxed in the same manner as other personal and real estate "'of the County and the Town in which such Bank or banking associ- "'ation is located.' The 7th section of said act repeals the 20th and 21st "sections of the Act of the Legislature for the assessment of property, "and for the assessment of property and collection of taxes in counties "adopting township organization. Fearing, in consequence of the de- "lay in publishing the laws of the last session, that your assessor or "assessors may be uninformed of the change in relation to the assess-
7 "ment of Bank property, I therefore request you to notify your assessor "or assessors of the change in the law, and require them to assess the "Bankers in your County under the law now in force.

"In case of the absence, refusal, or neglect of the officers of the "Bank to make the list required by the law, upon application, this "department will furnish the assessor with such information in relation "to the property of such Bank, as may be in the possession of

"Yours Respectfully,

"JESSE K. DUBOIS, *Auditor.*"

It also appeared in evidence, from the testimony of CHARLES H. ROCKWELL, that said Rockwell was the President of said Bank of the Republic in August, A. D. 1857; that the amount of capital stock of said Bank paid in at that time, was Fifty Thousand Dollars; that there was at that time no surplus profits nor reserved fund belonging to said Bank; there was no real estate belonging to said Bank; that

there was no other personal property belonging to said Bank, over and above the said Fifty Thousand Dollars capital paid in; that said Bank had at that time bonds and stocks deposited with the Auditor of the State of Illinois, as a basis of issue for the circulating notes of said Bank, to the amount of Four Hundred and Six Thousand Dollars, being the market value of said bonds, as estimated by said Auditor; that the amount of circulating Notes issued to the said Bank, upon said bonds, was Four Hundred and Three Thousand Dollars; that
8 the balance due upon the purchase of said bonds, when procured, was paid in the notes issued by said Bank; that said bonds deposited draw interest, and said Bank receives said interest, when paid, so long as said Bank complies with the provisions of the general banking law of the State of Illinois; that said Bank had Thirteen Thousand Dollars in specie on hand on the eighth day of April, A. D. 1857; that after the passage of the act of the Legislature of the State of Illinois in 1857, amendatory to the general banking law of said State, the said Auditor demanded of said Bank the proof that Fifty Thousand dollars of actual cash capital had been paid in or secured to be paid in to said Bank, and that such proof was filed, as required, in said Auditor's office; that there is no other or farther cash capital paid in or secured to be paid in to said Bank, than the said sum of Fifty Thousand dollars.

The said parties here rested their case, and the said cause having been submitted to the Court upon the testimony as aforesaid, the said Court did thereupon determine, order, adjudge, and decree, that the valuation of the property of the said Plaintiff be reduced to the sum of Four Hundred and Nineteen Thousand Dollars; and that the said judgment of said Court be certified by the Clerk of said Court to the County Clerk of Hamilton County, and that the said County Clerk be directed to correct the assessment lists for said year, in accordance with the said judgment of said Court.

9 STATE OF ILLINOIS.

CIRCUIT COURT OF HAMILTON COUNTY.

Of the May Term, A. D. 1858.

We do hereby agree, in the case of the Bank of the Republic vs. The People of Hamilton County, that the following questions and points of law arising in the said cause may be submitted to the Supreme Court of the State of Illinois, for final judgment and determination, and that no further action be taken, or further proceedings had in the said cause, until the opinion of the said Supreme Court shall be first had thereon, to wit:

I.—Whether the said assessment of Plaintiff's property for the year 1857, was not invalid, for the reason that the assessor did not comply with the provisions of the statutes of the State of Illinois,

in not leaving the notice and blank required by law for the listing of property, and not making any note or memorandum of the date and name as required in such cases, and not noting the words "by assessor," in the assessment lists against the name of the Plaintiff.

II.—Whether there was any such neglect or refusal on the part of the Plaintiff to list property, as the law contemplates, in order to authorize the assessor to value the property independently of the owner.

III.—Whether said assessor was not bound to accept the statement of the property as listed by the President of said Bank, on being notified that it was ready for him at the Clerk's Office, before
10 closing his assessment lists, and before entering therein any valuation of said property.

IV.—Whether said statement of the Auditor was sufficient authority for said assessor to enter the valuation of the property of said Bank without further information or inquiry.

V.—Whether the assessor had any legal authority to assess bank property at all.

VI.—Whether the provision of the law is not compulsory, requiring a reduction of the assessment to the valuation fixed by the person required to list, when verified by the oath of such person, on applying for such reduction.

VII.—Whether the bonds or stocks deposited with the State Auditor as the basis of issue of said Bank, are taxable as personal property of said Bank.

VIII.—Whether said stocks so deposited are the measure of the capital stock of said Bank, and liable to taxation according to their market value.

IX.—Whether the Act of 1857, amendatory of the general banking law, makes the *bona fide* cash capital of said bank, actually paid in or secured to be paid in, the basis of taxation for said Bank.

X.—Whether the term, "capital stock paid in," as employed in the sixth section of said amendatory Act, is to be construed as synonymous with the term "*bona fide* cash capital actually paid in," as it occurs in the eighth section of said Act.

XI.—Whether the "capital stock paid in or secured to be paid in," as used in said sixth section, means the investment of moneys
11 other than the proceeds of the notes of issue of the Bank, whether in purchase of real estate, coin, stocks deposited, or any other property belonging to the Bank.

XII.—Whether the bank officer, in listing the property of the Bank, as required by law, is bound to include in such list, the stocks deposited by the Bank, estimated according to their market value, together with the coin on hand, and also the actual cash capital paid in, other than the proceeds of its own circulating notes, as well as any surplus profits or reserved fund in the Bank.

XIII.—Whether, if said stocks deposited are required to be listed as capital stock, together with the coin, *bona fide* cash capital paid in, surplus profits and reserved fund, the Bank may not deduct from the aggregate amount thereof, the true amount of its outstanding circulation.

XIV.—Whether the basis of taxation for Banks, under the said amendatory Act of 1857, is [not] the same with that for individuals and other corporations and associations, namely, the actual value of property which they own; and in estimating such value, whether they are [not] allowed, in listing property, to deduct from the gross amount of moneys and credits owned, the amount of *bona fide* debts owing, in the same manner as other persons or corporations.

XV.—Whether the said amendatory Act of 1857, in imposing additional burdens upon the Banks without any corresponding advantage or benefit conferred, and not authorized at the time of the passage of the general banking law, or its adoption by the people, is not wholly null and void, and in conflict with the Constitution of the United States, as impairing the obligation of contracts.

12

XVI.—Whether an appeal lies to the Circuit Court, from the decision of the County Court, on the refusal of an application to said Court, to reduce the valuation of property as assessed by the County Assessor.

Witness our hands this twenty fourth day of May, A. D. 1857.

RICH & STEELE, *Att'ys for Plaintiffs in Error.*

CHESTER CARPENTER, *Att'y for Defendant in Error.*

EDWIN BEECHER,
Judge 12th Judicial Circuit, Ills.

STATE OF ILLINOIS, }
HAMILTON COUNTY, } ss.

I, J. Shoemaker, Clerk of the Circuit Court in and for the County of Hamilton, and State of Illinois, do hereby certify that the foregoing is a true and correct copy of the certificate of proceedings, and the points of law and questions arising in the case of The Bank of the Republic vs. The People of the County of Hamilton, as certified and agreed upon by counsel in the case, or the attorneys of the respective parties in said cause, and now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal ot said Court, at McLeansboro, this 26th day of May, A. D. 1858.

J. SHOEMAKER, *Clerk of the*
[SEAL.] *Circuit Court of the County of Hamilton,*
State of Illinois.

ERRORS ASSIGNED.

I.—The Circuit Court erred in deciding that the mode of making the said assessment of Plaintiff's property was in conformity to law.

II.—The Court erred in refusing to reduce the valuation of the property of said Bank to the amount stated in the list furnished by the proper officer of said Bank, after being verified by the said officer's oath.

III.—The Court erred in deciding that the Bonds deposited by said Bank, as security for its issues, were taxable at their market value, together with the specie on hand, without allowing any deduction for its outstanding circulation or indebtedness.

RICH & STEELE,
For Plaintiffs in Error.

30

Bank of the Republic

vs

People of Hamilton Co

Clerks Office

Filed October 1. 1858

N. Johnston Clk

SUPREME COURT OF ILLINOIS.

THE BANK OF THE REPUBLIC,

Plaintiff in Error,

vs.

THE PEOPLE OF HAMILTON COUNTY,

Defendants in Error.

I.

The General Banking Law of Illinois, of 1851, was passed in pursuance of the provisions of the Constitution of that State, in § 5, 10th article, and all subsequent Acts passed by the Legislature, to amend or alter the provisions of that Act, not submitted to the people, are in violation of the Constitution, and void.

1.—The 5th section of the 10th article (1 Stat.) 71.) is—"No "Act of the General Assembly, authorizing Corporations or "Associations with banking powers, shall go into effect, or in "any manner be in force, unless the same shall be submitted to "the people at the general election next succeeding the passage "of the same, and be approved by a majority of all the votes "cast at such election for and against such laws."

2.—This Act of 1851 was submitted to the people, in accordance with the provisions of the Constitution, in the mode specified in the 39th, 40th and 41st sections of the Act, (1 Stat. 120), and the Act provides that—"the question whether or not this "Act shall go into effect, or in any manner be in force, shall be

"submitted to the people, and if the same is approved by a "majority of all the votes cast at said election, for and against "the same, it shall go into effect and be in force from and after "the date of said election; otherwise, it shall not go into effect, "or in any manner be in force." And, in accordance with these and other provisions, the measure was sustained and adopted by a majority of the people, and became a law.

3.—This Act, though *proposed* by the Legislature, was passed by the *people* of Illinois, in their individual capacity, and it can only be modified or amended by the body which passed it.

4.—It was entirely competent for the people, in making the Constitution, to provide for the passage of all or any law by the people in their primary assemblies; but the Legislature do not possess any such power, as it is the transfer of a legislative authority from themselves, upon whom it is conferred, and which they cannot delegate.

In the State of New York a number of cases have arisen, and been decided in the Supreme Court, and one in the Court of Appeals, in relation to the validity of an Act of the Legislature in relation to free schools, which was submitted to the people.

In the case of Johnson vs. Rich, 9 Barb. S. C. R. 680, the Supreme Court decided that the Act was constitutional, but in the cases of Forne vs. Cramer, 15 Barb. 112, and of Bradley vs. Baxter, the Supreme Court held the Act to be unconstitutional. In the last case, Pratt, J., in giving the opinion of the court, says "the question *upon the final passage of the bill* was to be taken "at the polls."

In the case of Barts vs. Hinwood, 4 Selden's Rep. of the Court of Appeals, 488, Chief Justice Ruggles, in giving the opinion of the court, says, "the highest legislative power in this State is "vested by the Constitution, in the Assembly (art. 3, § 1). The "power of passing general statutes exists exclusively in legislative "bodies." In one instance alone it is limited or qualified. "No "law for contracting a debt shall take effect until it shall, at a "general election, have been submitted to the people and have "received a majority of all the votes cast for and against at such "election. *In this special and single case, the people, by the Con-* "*stitution, reserved legislative power to themselves.* The Legis- "lature pass the bill in the usual form of enactment, but the

"statute has no force or authority until it is sanctioned by a vote "of the people. In substance and reality, the Legislature pro- "pose the law, the people pass or reject it by a general vote. "This is legislation by the people."

The Court unanimously decided that, in the absence of any provision in the Constitution authorizing a submission to the peeple, it was not in the power of the Legislature to do so, and that the Act was void.

See also Parker vs. Commonwealth, 6 Barr. (Penn.) 506; Commonwealth vs. Quarter Sessions, 8 Barr. 391; Commonwealth vs. Painter, 10 Barr. 214.

5.—The exercise of the power of modification or amendment by the Legislature alone, of an Act to the taking effect of which the direct sanction of the people by popular vote is necessary, would, under the provisions of the Constitution, be wholly nugatory. Not only could the Legislature repeal what the people had adopted, but they could amend and modify it so as to render all its provisions precisely the reverse of that which the people determined should be the law. Indeed, after the people should have passed *any* law on the subject, however strict in its provisions, the whole subject would be taken from their control, and the Legislature might, by amendment and modification, adopt any measure of the most loose and dangerous character, and which the people would never have sanctioned.

It would be wholly unimportant what might be the provisions of the original Act, and even a clause inserted in it, that the Act should not be altered, except by a vote of the people, or that it should not be altered at all, would be wholly inoperative, because that would be only a legislative provision, which no Legislature would have the power to make, and might be repealed by any subsequent Legislature. The power of modification and amendment gives substantially the entire power over the subject. Instead of the restrictive provision in the Constitution on the subject, the people might just as well have provided in terms that the Legislature alone might pass any law which they deemed proper. The power to make *any* amendment gives the power to make *all* amendments, and the power to make all amendments is the power of unrestricted and unlimited legislation.

If this power exists, the people may pass a law authorizing banks

of circulation alone, and the Legislature may at once amend it and repeal their authority to establish such banks, and authorize banks of discount and deposit, and *vice versa*. The Legislature and the people may authorize loans and discounts at seven per cent., as is done in the Act of 1851, and the Legislature, without the people, may extend it to ten per cent., as in the Act of 1857, or to any extent whatever; and so of every other conceivable provision.

The construction contended for is directly and palpably opposed, not only to the manifest spirit and intent of the Constitution, but to the plain purport of the language used. The Constitution says that "no act of the General Assembly, *authorizing Corporations or Associations with banking powers*, shall "go into effect, or in any manner be in force" unless submitted to the people. The Legislature may, by an amendatory Act, authorize, as the case may be, banking corporations of a wholly different character, and with *powers* distinct from and opposed to the provisions of the Act passed by the people.

In other States also, when a provision existed in their Constitutions requiring the sanction of the people to the validity of any law or classes of laws, it is believed that the practice has been, if the law, in the opinion of the Legislature, required amendment, to submit such amending law to the people, in the same manner as the original Act.

The decisions referred to above, in relation to Acts submitted to the people by the Legislature, without constitutional sanction, whether those decisions have been in favor of or against the power of the Legislature to submit legislative acts to the people —all proceed upon the ground that by such a constitutional provision the Legislature is deprived of *the ordinary legislative authority on the subject*, that the law can only be *proposed* by the Legislature, and that the people in fact and substance, and almost in form and language, pass or reject it.

If these views are correct, all laws passed subsequent to the General Banking Law of 1851, in any manner modifying or varying the provisions of that law, are clearly void. The law of 1851 is in force in all its provisions; as, however, this law has not been pursued in the assessment of the tax in question, the whole proceedings are entirely and absolutely void.

II.

This Corporation, like other Corporations in Illinois, is entitled to deduct from the gross amount of moneys and credits, the amount of all bona fide debts owing by the Corporation to any other person, company, or corporation, in pursuance of the 11th section of the Revenue Act, passed February 12th, 1853, (2 Stat. of Ill. 1033), notwithstanding the proviso in the section—"That "nothing in this section shall be so construed as to apply to any "bank company or corporation exercising banking powers and "privileges."

I.

By the 2nd section of the 9th article of the Constitution, it is provided that "the General Assembly shall provide for "levying a tax by valuation, so that every person and corpora- "tion shall pay a tax in proportion to the value of his or her pro- "perty, such value to be ascertained by some person or persons "to be elected or appointed, in such manner as the General "Assembly shall direct," although it is provided in the same section that "the General Assembly shall have power to tax "peddlers, auctioneers, brokers, merchants, commission mer- "chants, showmen, inn keepers, grocery keepers, toll bridges, "and ferries, and persons using and exercising franchises and "privileges, in such manner as they shall from time to time "direct."

1.—This section expressly provides that "every person and "corporation shall pay a tax *in proportion to the value of his or "her property*," it being the language and clear intent of the Act, that all taxes on *property* should be uniform, and that no discrimination should be made by law between persons or corporations of any kind, so far, at least, as should relate to a tax on property.

2.—There is nothing in the last clause of the section limiting or restraining the words first used. First,—Because "persons "using and exercising franchises and privileges," are regarded as of the same character and to be governed by the same rules as the various persons previously named, viz: "peddlers, auc- "tioneers, brokers, merchants, inn keepers, toll bridges and "ferries, &c." It, clearly, was not designed as a tax on property

in either of these cases, but in the nature of an assessment for a license granted, and in lieu of a tax on the property embarked in the business. It certainly did not intend to authorize *both* a tax on property embarked in the business, and a tax for a license to conduct the business. Second,—The "franchises and privileges" referred to were those of "persons," and were not intended to include corporations. This appears from the fact that the word *persons* is alone used, and also from the fact that in the first part of the section it is expressly provided that *every corporation* shall pay a tax in proportion to the value of its property, which would be perfectly nugatory if *every corporation* should be included in the last clause, and subject to taxation without reference to the value of its property, and at the pleasure of the General Assembly.

3.—If, however, it be claimed that all corporations are the *franchises* refered to, it certainly means something distinct from the tax on the property of the corporation, as specified in the previous part of the section. If it means a tax on the *franchise*, it is a very different thing from the tax on the property of the corporation, as appears from the decision of the Supreme Court, in the case of Gordon vs. Appeal Tax Court (3 How. Rep. 133), in which it was decided that "the charter of a bank is a fran-"chise which is not taxable as such, if a price has been paid for "it which the Legislature accepted; but the corporate property "of the bank is separated from the franchise, and may be taxed, "unless there is a special agreement to the contrary."

II.

In the 5th section of the 9th article of the Constitution (1 Stat. of Ill. p. 71), it is provided that "the corporate authorities of "counties, townships, school districts, cities, towns and villages "may be vested with power to assess and collect taxes for corporate purposes, *such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.*

This provision of the Constitution makes no exception whatever, and applies to all property, by whomsoever held, and declares that the taxes on such property shall be *uniform*, whether held by individuals or corporations.

It also shows that the exceptions stated in the 2nd section of the same article above referred to, did not and could not apply to a tax on property anywhere, but referred to a duty exacted for a license to certain classes of persons there enumerated. It certainly, in express terms, required that, so far as concerned the taxes by counties, cities, towns and villages, &c., there should be perfect uniformity.

It is apparent, therefore, that the provision in the 11th section of the Revenue Act, above referred to, allowing a deduction of debts due by a person or corporation, from the amount of the assessment, for his moneys and credits, and yet declaring in the proviso that this deduction shall not be made in the case of a bank, is in violation of the two foregoing sections of the Constitution of Illinois, and, therefore, void.

It imposes a heavier tax on the banks than on similar property held by other corporations, for it is evidently immaterial whether a law provides in terms for valuing the property of banks higher than other corporations, or refusing them the deduction which is made to others under similar circumstances.

III.

It is also provided that in the 15th article of the Constitution, in relation to the two mill tax, applicable to the principal of a certain portion of the public debt, that "there shall be annually "assessed and collected a tax of two mills *upon each dollar's* "*worth of taxable property*, in addition to all other taxes, to be "applied as follows, &c."

It appears, thus, that this is a certain and fixed rate upon *every dollar's worth of taxable property*, and certainly does not countenance any discrimination between the owners of property, or any deduction to one class of owners which is not to be applied to all others. It also declares that *the other State revenue* is assessed and collected *in the same manner*, showing, when taken together, that it is by a *uniform tax on property* that all the revenues for the State, counties, &c., are to be collected.

IV.

It also appears by the 6th section of the Act of 1857, in relation to "banks," &c., (1 Stat. 129), it is expressly provided that

"every bank," &c., "shall be listed by the President or Cashier "thereof, and assessed and taxed in the same manner as the "other personal and real estate of the county and town in which "such bank or banking association is located."

If this Act is to be considered as in force (which is denied), it expressly provides that the banks shall be "*assessed and taxed "in the same manner as the other personal and real estate of the "county, &c.,*" and in that respect conforms to the Constitution, and repeals any prior and inconsistent provision.

V.

By the 6th section of the General Banking Law, passed in 1851, and approved by the people, as required by the Constitution, it is expressly provided that the "rate of taxation shall be "the same as that required to be levied on other taxable pro- "perty by the revenue laws of the State."

This law is claimed to be in force, as it could not be altered, except by a vote of the people under the Constitution, as has already been shown.

III.

The 6th section of the Act of February 14th, 1857, provides that "The *Capital Stock* of every bank or banking association "paid in or secured to be paid in, except so much thereof as is "invested in real estate, which shall be taxed as real estate, as herein provided, together with its surplus profits or reserved "funds, and all the real estate of every such company, shall be "listed by the President or Cashier thereof, and assessed or "taxed in the same manner as other personal and real estate of "the county and towns in which such bank or banking associa- "tion is located."

The question is, what is the meaning of the words "*Capital Stock*," in this section?

1.—The uniform understanding of that term, as applied to banks and other corporations, is the amount represented by *shares*, in the hands of stockholders, severally, of the amount specified in the Act of Incorporation or articles of association.

2.—The amount of Capital Stock in any corporation does not purport to show the amount of business transacted by such corporation, nor the amount of property held by it. A manufactu-

ring company, for instance, may, with a capital stock of $50,000, manufacture goods to any amount, may receive the notes of the persons to whom the goods are sold, and give their own notes in the course of their business, to the amount of a million of dollars, but the capital stock is not increased or affected by so doing.

3.—A bank with a capital of $50,000 may, under the banking laws of Illinois, confessedly receive deposits to an indefinite amount, and may loan money, buy and sell gold and silver coin, and discount notes and bills; they may receive these deposits to the amount of millions of dollars, and transact business to the same extent, and yet, in the case supposed, the *Capital Stock* of the bank will remain the fixed sum of $50,000. And in such case, under this law, the tax to be paid by the bank would be, very justly, on its capital stock, and the *profits* of its business, "its surplus profits or reserved funds," and, as in the case of manufacturing companies, not upon the amount of business done by them.

3.—But it is contended that, although such would be the rule in the case of a bank of discount and deposit, yet, that a different rule should be applied when a bank, on the deposit of State Stocks, has received an additional amount of circulating notes, and that the amount of stocks deposited, or circulating notes issued, is to be the amount upon which the tax is to be assessed.

5.—There is nothing in the reason of the thing, or analogy to other banks, to justify any such construction, nor in analogy to any other corporation, and would be an unjust and unreasonable discrimination between institutions engaged in similar business.

6.—The policy of the Revenue Law of the State is opposed to any such construction. In the case of corporations and individuals, when a tax is laid on moneys and credits, the amount due by the corporation or individual is deducted, and thus, substantially, the tax is only laid upon the balance or profits of the business.

7.—There is nothing whatever in the General Banking Law of 1851, or any subsequent Act, which imposes a tax upon the bank to the amount of its circulating notes, or requires the capital of the bank to be equal to the amount of the circulating notes issued to it. The statute requires that ever bank shall have a capital of at least $50,000 paid in, but it authorizes the issue of

circulating notes to an individual, on the deposit of State stocks, without his becoming a banking corporation, or being in any way subjected to the provisions of law applicable to banks; and there seems to be no reason in the spirit or letter of the law why circulating notes should not be issued to banks on the deposit of stocks, beyond the amount of their capital stock.

8.—The 10th section of the general banking law of 1851 (1 Stat. 113) shows that the legislature understood that the amount of the capital stock of the banks was the amount represented by *shares* in the hands of *stockholders*. It provides that "The *shares* "of said association shall be deemed personal property, *subject* "*to taxation*, and shall be transferable on the books of the asso- "ciation in such manner as may be agreed on in the articles of "association, and any person becoming a *shareholder* by such "transfer, shall in proportion to his shares succeed to all the "rights and liabilities of shareholders by whom the transfer was "made."

The same section provides that, "Taxes shall be levied on and "paid by the corporation, and not upon the individual stockhold- "ers." This provision is for the sake of convenience and for the benefit of the State which thus secures the payment of taxes on all the shares of the bank wherever held, but does not increase the amount to be paid on the stock. Suppose the stockholders themselves had been required to pay the tax on the stock individually held by them, it could have been only on the stock distributed to and actually held by them. The tax being paid by the corporation does not increase the number of shares nor the amount to be paid.

9.—The provisions of the 8th and 9th sections of the Act of 1857 (1 Stat. 129), fully sustain these views.

The Auditor is required to be satisfied that every bank has a "bona fide cash capital paid in" of at least fifty thousand dollars, "before he shall issue any circulating notes or bills to any such "bank;" and the 9th section provides that "no more circulating "notes shall be issued, under any circumstances, to any bank or "association organized under this Act, until the Auditor shall be "satisfied that such bank or association has such actual capital "as is required in the 1st section of this Act."

It is most distinctly implied by the language of this Act, that

if the Auditor is satisfied that there is an actual capital of $50,000, he may issue circulating notes for stocks deposited, beyond the amount of the capital. And if, as is claimed, the amount of State Stocks deposited and notes issued is the sole measure of the capital, these provisions would have been idle and nugatory, and the investigations of the Auditor of no avail, as in every instance the stocks themselves were in his possession, and their value in market known to him.

10.—It appears positively by the evidence in this case (which is uncontradicted) given by the President of the Bank, "that the "amount of capital stock paid in at that time, (April, 1857), "was fifty thousand dollars," and "that after the passage of the "Act of the Legislature of the State of Illinois, in 1857, amenda- "tory to the General Banking Law of said State, the said Auditor "demanded of said bank the proof that fifty thousand dollars of "actual cash capital had been actually paid in, or secured to be "paid in to said bank, and that such proof was filed as required, "in said Auditor's office; that there is no other or further cash "capital paid in to said bank, than the said sum of fifty thou- "sand dollars."

11.—The foregoing suggestions are designed as an answer to the 5th, 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th questions and points presented in this case, and incidentally and by inference to the 7th question.

CHICAGO DEMOCRAT PRINT, 45 LA SALLE STREET.

P. 1

Supreme Court of the State of Illinois.

The Bank of the Republic,
PLAINTIFF IN ERROR,

vs.

The People of Hamilton County,
DEFENDANTS IN ERROR.

Agreed Case from Hamilton.

This case was brought into the Circuit Court of Hamilton County by appeal from the County Court of Hamilton County, in the matter of the application by the Plaintiff to said County Court, for a reduction of the Assessment of the property of said Plaintiff, as made by the Assessor of Hamilton County for the year 1857, which said application was refused by said County Court at the December Term thereof, A. D. 1857.

The said cause came on for trial and was heard before the Honorable EDWIN BEECHER, Circuit Judge, at the May Term of the Circuit Court of Hamilton County, A. D. 1858, and was tried by the said Court without the intervention of a jury.

On the trial of the said cause, it appeared in evidence from the assessment lists made out by the County Assessor of Hamilton County for the year 1857, and in the possession of the County Clerk of said County, that the valuation of the personal property of the Plaintiff for said year was Four Hundred and Forty Two Thousand dollars; that the said valuation was entered in said lists in the column headed "Bonds,
2 Stocks, &c.," and that there was no noting on the said lists, of the words "by Assessor," opposite the name of the Plaintiff, or in any way connected therewith.

It further appeared from the testimony of WILLIAM RICKCORDS, that he was agent for the Plaintiff, and resided in the precinct of McLeansboro, in the County of Hamilton, where the said Bank of the Republic is located; that the County Assessor called upon the said agent some time in the month of June or July, 1857, for a statement of the property of Plaintiff for taxation; that the President and Cashier of said Bank were at that time absent from said County; that said assessor then stated to said agent that the list of property required of the Plain-

tiff would be furnished in time for the purpose of assessment, if supplied by the first day of September thereafter, and that said agent engaged to procure such statement by that time; that said assessor did not at any time leave with said agent, or at the office of the Plaintiff, any written or printed notice requiring Plaintiff to make out for the said assessor a statement of the property required to be listed by the said Bank, nor any written or printed blank for the statement required of said Bank; that on the nineteenth day of August, A. D. 1857, the said agent deposited in the Post Office, at Dwight, in Livingston County, in the State of Illinois, a statement of the property of said Bank for taxation, as listed and signed by Charles H. Rockwell, the President of said Bank; that said list, so made out, stated the capital stock of said Bank
3 paid in, at Fifty Thousand Dollars; that said list was directed to "S. A. Martin, County Clerk of Hamilton County, Illinois;" that a letter was enclosed with said list, requesting said County Clerk to hand the same to the Assessor of said County.

It also appeared in evidence, by the testimony of JOHN McELVAIN, that said McElvain was Deputy Clerk of said County of Hamilton, in the months of August and September, A. D. 1857; that while performing the duties of the office of County Clerk of said County, he received through the Post Office a letter enclosing a statement purporting to be a list of the property of the Bank of the Republic, for taxation; that there was also a special request accompanying said list, that it might be handed to the Assessor of Hamilton County; that the said letter arrived by ordinary course of mail; that said McElvain did not see the said assessor for some days after the arrival of said list; that he informed said assessor, on the first opportunity, and before said assessor had completed his assessment lists for said year, of the arrival of said statement at his office, and requested said assessor to call at his office and receive the same; that he then informed the said assessor of the contents of said statement so received, and that said assessor stated that he would enquire of the Auditor for further information, and did not at any time apply for or procure the said statement from said Clerk's Office for use or examination.

It also further appeared in evidence, from the testimony of JOB STANDIFER, that said Standifer was the Treasurer and Assessor of
4 the County of Hamilton for the year 1857; that he resided at that time about nine miles from McLeansboro, the County seat of said County; that he called on William Rickcords, the agent for the Bank of the Republic, at McLeansboro, in said County, some time in the month of May, A. D. 1857, for a statement of the taxable property of said Bank, for said year; that he stated to said agent, that said list might be handed in

[8502-68]

at any time by the first day of September of that year; that he left with said agent no written or printed notice, nor blank, to make out a statement of the property of said Bank required to be listed; and that he left no such notice or blank at the place of business of said Bank or elsewhere, and that he did not at any time make any note in any book or memorandum, of the date of leaving any such notice, or the name of the Bank so required to list; that said assessor finished his round of assessing through the County for said year, on the eleventh day of September; that before proceeding to make up and draw off his lists of assessments for said year, he was informed by Mr. McElvain, Deputy Clerk of said County, that he had received a statement of the property of the Bank of the Republic; that said McElvain told him that the amount reported in said statement was Fifty Thousand Dollars; that said assessor never saw said statement; that said agent, Rickcords, was not in said County when said assessor heard of the arrival of said statement, nor until after said assessor had closed his books of assessment for said year; that on the fifteenth day of September, A. D. 1857, and after said assessor was informed of the arrival of said statement, the said assessor addressed a letter to the Auditor of the State of Illinois, enquiring in relation to the amount of taxable property of said Bank, and that said Auditor replied in the following letter, to wit:

"STATE OF ILLINOIS.

"AUDITOR'S OFFICE, Springfield, Sept. 19, 1857.

"JOB STANDIFER, ESQ.:

"Dear Sir:—Your note of the 15th inst. requesting "information in regard to the taxable property of the Banks located at "McLeansboro, is at hand. The only means of information that I pos- "sess in relation to the matter are the quarterly statements of affairs on "file in this office, for the quarter ending first Monday in April, 1857, "from which the following are correct abstracts, viz:

"E. I. TINKHAM & Co.'s BANK.

"Capital stock paid in and invested according to law, - - $150,000

"HAMILTON COUNTY BANK.

"Capital stock paid in and invested according to law, - - $202,500

"BANK OF THE REPUBLIC.

"Capital stock paid in and invested according to law, - - $442,000

"The above statements are sworn to by the officers of the several "banks. The law of last session also makes them liable to taxation

"upon their surplus profits or reserved funds, but I have no means of "ascertaining the amount of the latter item.

"Respectfully Yours,

"JESSE K. DUBOIS, *Auditor.*"

6 It also appeared in evidence, from the testimony of the said Standifer, that some time during the month of May, A. D. 1857, he received through the hands of the County Clerk of Hamilton County, a paper purporting to be a circular from the Auditor of the State of Illinois, of which the following is a copy, to wit:

"AUDITOR'S OFFICE,

"SPRINGFIELD, ILLINOIS, May 14th, 1857.

"SIR:—By the 6th section of an act of the Legislature of the "State of Illinois, entitled 'An act to amend an act to establish a gene- "ral system of Banking,' passed Feb'y 16th, 1851, and the act amenda- "tory thereto, approved Feb'y 14th, 1857, it is provided 'that the capi- "'tal stock of every Bank or banking association, paid in or secured to "'be paid in, except so much thereof as is invested in real estate, which "'shall be taxed as real estate as herein provided, together with the sur- "'plus profits or reserved funds, and also the real estate of every such "'company, *shall be listed by the President or Cashier thereof*, and *as-* "'*sessed* and taxed in the same manner as other personal and real estate "'of the County and the Town in which such Bank or banking associ- "'ation is located.' The 7th section of said act repeals the 20th and 21st "sections of the Act of the Legislature for the assessment of property, "and for the assessment of property and collection of taxes in counties "adopting township organization. Fearing, in consequence of the de- "lay in publishing the laws of the last session, that your assessor or "assessors may be uninformed of the change in relation to the assess-
7 "ment of Bank property, I therefore request you to notify your assessor "or assessors of the change in the law, and require them to assess the "Bankers in your County under the law now in force.

"In case of the absence, refusal, or neglect of the officers of the "Bank to make the list required by the law, upon application, this "department will furnish the assessor with such information in relation "to the property of such Bank, as may be in the possession of

"Yours Respectfully,

"JESSE K. DUBOIS, *Auditor.*"

It also appeared in evidence, from the testimony of CHARLES H. ROCKWELL, that said Rockwell was the President of said Bank of the Republic in August, A. D. 1857; that the amount of capital stock of said Bank paid in at that time, was Fifty Thousand Dollars; that there was at that time no surplus profits nor reserved fund belonging to said Bank; there was no real estate belonging to said Bank; that

there was no other personal property belonging to said Bank, over and above the said Fifty Thousand Dollars capital paid in; that said Bank had at that time bonds and stocks deposited with the Auditor of the State of Illinois, as a basis of issue for the circulating notes of said Bank, to the amount of Four Hundred and Six Thousand Dollars, being the market value of said bonds, as estimated by said Auditor; that the amount of circulating Notes issued to the said Bank, upon said bonds, was Four Hundred and Three Thousand Dollars; that
8 the balance due upon the purchase of said bonds, when procured, was paid in the notes issued by said Bank; that said bonds deposited draw interest, and said Bank receives said interest, when paid, so long as said Bank complies with the provisions of the general banking law of the State of Illinois; that said Bank had Thirteen Thousand Dollars in specie on hand on the eighth day of April, A. D. 1857; that after the passage of the act of the Legislature of the State of Illinois in 1857, amendatory to the general banking law of said State, the said Auditor demanded of said Bank the proof that Fifty Thousand dollars of actual cash capital had been paid in or secured to be paid in to said Bank, and that such proof was filed, as required, in said Auditor's office; that there is no other or farther cash capital paid in or secured to be paid in to said Bank, than the said sum of Fifty Thousand dollars.

The said parties here rested their case, and the said cause having been submitted to the Court upon the testimony as aforesaid, the said Court did thereupon determine, order, adjudge, and decree, that the valuation of the property of the said Plaintiff be reduced to the sum of Four Hundred and Nineteen Thousand Dollars; and that the said judgment of said Court be certified by the Clerk of said Court to the County Clerk of Hamilton County, and that the said County Clerk be directed to correct the assessment lists for said year, in accordance with the said judgment of said Court.

9 STATE OF ILLINOIS.

CIRCUIT COURT OF HAMILTON COUNTY.

Of the May Term, A. D. 1858.

We do hereby agree, in the case of the Bank of the Republic vs. The People of Hamilton County, that the following questions and points of law arising in the said cause may be submitted to the Supreme Court of the State of Illinois, for final judgment and determination, and that no further action be taken, or further proceedings had in the said cause, until the opinion of the said Supreme Court shall be first had thereon, to wit:

I.—Whether the said assessment of Plaintiff's property for the year 1857, was not invalid, for the reason that the assessor did not comply with the provisions of the statutes of the State of Illinois,

in not leaving the notice and blank required by law for the listing of property, and not making any note or memorandum of the date and name as required in such cases, and not noting the words "by assessor," in the assessment lists against the name of the Plaintiff.

II.—Whether there was any such neglect or refusal on the part of the Plaintiff to list property, as the law contemplates, in order to authorize the assessor to value the property independently of the owner.

III.—Whether said assessor was not bound to accept the statement of the property as listed by the President of said Bank, on being notified that it was ready for him at the Clerk's Office, before
10 closing his assessment lists, and before entering therein any valuation of said property.

IV.—Whether said statement of the Auditor was sufficient authority for said assessor to enter the valuation of the property of said Bank without further information or inquiry.

V.—Whether the assessor had any legal authority to assess bank property at all.

VI.—Whether the provision of the law is not compulsory, requiring a reduction of the assessment to the valuation fixed by the person required to list, when verified by the oath of such person, on applying for such reduction.

VII.—Whether the bonds or stocks deposited with the State Auditor as the basis of issue of said Bank, are taxable as personal property of said Bank.

VIII.—Whether said stocks so deposited are the measure of the capital stock of said Bank, and liable to taxation according to their market value.

IX.—Whether the Act of 1857, amendatory of the general banking law, makes the *bona fide* cash capital of said bank, actually paid in or secured to be paid in, the basis of taxation for said Bank.

X.—Whether the term, "capital stock paid in," as employed in the sixth section of said amendatory Act, is to be construed as synonymous with the term "*bona fide* cash capital actually paid in," as it occurs in the eighth section of said Act.

XI.—Whether the "capital stock paid in or secured to be paid in," as used in said sixth section, means the investment of moneys
11 other than the proceeds of the notes of issue of the Bank, whether in purchase of real estate, coin, stocks deposited, or any other property belonging to the Bank.

XII.—Whether the bank officer, in listing the property of the Bank, as required by law, is bound to include in such list, the stocks deposited by the Bank, estimated according to their market value, together with the coin on hand, and also the actual cash capital paid in, other than the proceeds of its own circulating notes, as well as any surplus profits or reserved fund in the Bank.

XIII.—Whether, if said stocks deposited are required to be listed as capital stock, together with the coin, *bona fide* cash capital paid in, surplus profits and reserved fund, the Bank may not deduct from the aggregate amount thereof, the true amount of its outstanding circulation.

XIV.—Whether the basis of taxation for Banks, under the said amendatory Act of 1857, is [not] the same with that for individuals and other corporations and associations, namely, the actual value of property which they own; and in estimating such value, whether they are [not] allowed, in listing property, to deduct from the gross amount of moneys and credits owned, the amount of *bona fide* debts owing, in the same manner as other persons or corporations.

XV.—Whether the said amendatory Act of 1857, in imposing additional burdens upon the Banks without any corresponding advantage or benefit conferred, and not authorized at the time of the passage of the general banking law, or its adoption by the people, is not wholly null and void, and in conflict with the Constitution of the United States, as impairing the obligation of contracts.

12

XVI.—Whether an appeal lies to the Circuit Court, from the decision of the County Court, on the refusal of an application to said Court, to reduce the valuation of property as assessed by the County Assessor.

Witness our hands this twenty fourth day of May, A. D. 1857.

RICH & STEELE, *Att'ys for Plaintiffs in Error.*

CHESTER CARPENTER, *Att'y for Defendant in Error.*

EDWIN BEECHER,
Judge 12th Judicial Circuit, Ills.

STATE OF ILLINOIS, }
HAMILTON COUNTY, } ss.

I, J. Shoemaker, Clerk of the Circuit Court in and for the County of Hamilton, and State of Illinois, do hereby certify that the foregoing is a true and correct copy of the certificate of proceedings, and the points of law and questions arising in the case of The Bank of the Republic vs. The People of the County of Hamilton, as certified and agreed upon by counsel in the case, or the attorneys of the respective parties in said cause, and now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal ot said Court, at McLeansboro, this 26th day of May, A. D. 1858.

J. SHOEMAKER, *Clerk of the*
Circuit Court of the County of Hamilton,
State of Illinois.

[SEAL.]

ERRORS ASSIGNED.

I.—The Circuit Court erred in deciding that the mode of making the said assessment of Plaintiff's property was in conformity to law.

II.—The Court erred in refusing to reduce the valuation of the property of said Bank to the amount stated in the list furnished by the proper officer of said Bank, after being verified by the said officer's oath.

III.—The Court erred in deciding that the Bonds deposited by said Bank, as security for its issues, were taxable at their market value, together with the specie on hand, without allowing any deduction for its outstanding circulation or indebtedness.

RICH & STEELE,
For Plaintiffs in Error.

20

Bank of the Republic

vs

People of Hamilton Co

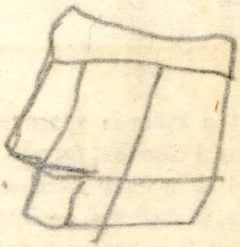
Henry J. Steele
for Plff

W. L. Freeman
for Deft

Reporter

8502

Filed October 1. 1858.
N. Johnston Clk



SUPREME COURT OF ILLINOIS.

THE BANK OF THE REPUBLIC,

Plaintiff in Error,

vs.

THE PEOPLE OF HAMILTON COUNTY,

Defendants in Error.

I.

The General Banking Law of Illinois, of 1851, was passed in pursuance of the provisions of the Constitution of that State, in § 5, 10th article, and all subsequent Acts passed by the Legislature, to amend or alter the provisions of that Act, not submitted to the people, are in violation of the Constitution, and void.

1.—The 5th section of the 10th article (1 Stat.) 71.) is—"No "Act of the General Assembly, authorizing Corporations or "Associations with banking powers, shall go into effect, or in "any manner be in force, unless the same shall be submitted to "the people at the general election next succeeding the passage "of the same, and be approved by a majority of all the votes "cast at such election for and against such laws."

2.—This Act of 1851 was submitted to the people, in accordance with the provisions of the Constitution, in the mode specified in the 39th, 40th and 41st sections of the Act, (1 Stat. 120), and the Act provides that—"the question whether or not this "Act shall go into effect, or in any manner be in force, shall be

"submitted to the people, and if the same is approved by a "majority of all the votes cast at said election, for and against "the same, it shall go into effect and be in force from and after "the date of said election; otherwise, it shall not go into effect, "or in any manner be in force." And, in accordance with these and other provisions, the measure was sustained and adopted by a majority of the people, and became a law.

3.—This Act, though *proposed* by the Legislature, was passed by the *people* of Illinois, in their individual capacity, and it can only be modified or amended by the body which passed it.

4.—It was entirely competent for the people, in making the Constitution, to provide for the passage of all or any law by the people in their primary assemblies; but the Legislature do not possess any such power, as it is the transfer of a legislative authority from themselves, upon whom it is conferred, and which they cannot delegate.

In the State of New York a number of cases have arisen, and been decided in the Supreme Court, and one in the Court of Appeals, in relation to the validity of an Act of the Legislature in relation to free schools, which was submitted to the people.

In the case of Johnson vs. Rich, 9 Barb. S. C. R. 680, the Supreme Court decided that the Act was constitutional, but in the cases of Forne vs. Cramer, 15 Barb. 112, and of Bradley vs. Baxter, the Supreme Court held the Act to be unconstitutional. In the last case, Pratt, J., in giving the opinion of the court, says "the question *upon the final passage of the bill* was to be taken "at the polls."

In the case of Barts vs. Hinwood, 4 Selden's Rep. of the Court of Appeals, 488, Chief Justice Ruggles, in giving the opinion of the court, says, "the highest legislative power in this State is "vested by the Constitution, in the Assembly (art. 3, § 1). The "power of passing general statutes exists exclusively in legislative "bodies." In one instance alone it is limited or qualified. "No "law for contracting a debt shall take effect until it shall, at a "general election, have been submitted to the people and have "received a majority of all the votes cast for and against at such "election. *In this special and single case, the people, by the Con-* "*stitution, reserved legislative power to themselves.* The Legis- "lature pass the bill in the usual form of enactment, but the

"statute has no force or authority until it is sanctioned by a vote "of the people. In substance and reality, the Legislature pro- "pose the law, the people pass or reject it by a general vote. "This is legislation by the people."

The Court unanimously decided that, in the absence of any provision in the Constitution authorizing a submission to the people, it was not in the power of the Legislature to do so, and that the Act was void.

See also Parker vs. Commonwealth, 6 Barr. (Penn.) 506; Commonwealth vs. Quarter Sessions, 8 Barr. 391; Commonwealth vs. Painter, 10 Barr. 214.

5.—The exercise of the power of modification or amendment by the Legislature alone, of an Act to the taking effect of which the direct sanction of the people by popular vote is necessary, would, under the provisions of the Constitution, be wholly nugatory. Not only could the Legislature repeal what the people had adopted, but they could amend and modify it so as to render all its provisions precisely the reverse of that which the people determined should be the law. Indeed, after the people should have passed *any* law on the subject, however strict in its provisions, the whole subject would be taken from their control, and the Legislature might, by amendment and modification, adopt any measure of the most loose and dangerous character, and which the people would never have sanctioned.

It would be wholly unimportant what might be the provisions of the original Act, and even a clause inserted in it, that the Act should not be altered, except by a vote of the people, or that it should not be altered at all, would be wholly inoperative, because that would be only a legislative provision, which no Legislature would have the power to make, and might be repealed by any subsequent Legislature. The power of modification and amendment gives substantially the entire power over the subject. Instead of the restrictive provision in the Constitution on the subject, the people might just as well have provided in terms that the Legislature alone might pass any law which they deemed proper. The power to make *any* amendment gives the power to make *all* amendments, and the power to make all amendments is the power of unrestricted and unlimited legislation.

If this power exists, the people may pass a law authorizing banks

of circulation alone, and the Legislature may at once amend it and repeal their authority to establish such banks, and authorize banks of discount and deposit, and *vice versa*. The Legislature and the people may authorize loans and discounts at seven per cent., as is done in the Act of 1851, and the Legislature, without the people, may extend it to ten per cent., as in the Act of 1857, or to any extent whatever; and so of every other conceivable provision.

The construction contended for is directly and palpably opposed, not only to the manifest spirit and intent of the Constitution, but to the plain purport of the language used. The Constitution says that "no act of the General Assembly, *authorizing Corporations or Associations with banking powers*, shall "go into effect, or in any manner be in force" unless submitted to the people. The Legislature may, by an amendatory Act, authorize, as the case may be, banking corporations of a wholly different character, and with *powers* distinct from and opposed to the provisions of the Act passed by the people.

In other States also, when a provision existed in their Constitutions requiring the sanction of the people to the validity of any law or classes of laws, it is believed that the practice has been, if the law, in the opinion of the Legislature, required amendment, to submit such amending law to the people, in the same manner as the original Act.

The decisions referred to above, in relation to Acts submitted to the people by the Legislature, without constitutional sanction, whether those decisions have been in favor of or against the power of the Legislature to submit legislative acts to the people —all proceed upon the ground that by such a constitutional provision the Legislature is deprived of *the ordinary legislative authority on the subject*, that the law can only be *proposed* by the Legislature, and that the people in fact and substance, and almost in form and language, pass or reject it.

If these views are correct, all laws passed subsequent to the General Banking Law of 1851, in any manner modifying or varying the provisions of that law, are clearly void. The law of 1851 is in force in all its provisions; as, however, this law has not been pursued in the assessment of the tax in question, the whole proceedings are entirely and absolutely void.

II.

This Corporation, like other Corporations in Illinois, is entitled to deduct from the gross amount of moneys and credits, the amount of all bona fide debts owing by the Corporation to any other person, company, or corporation, in pursuance of the 11th section of the Revenue Act, passed February 12th, 1853, (2 Stat. of Ill. 1033), notwithstanding the proviso in the section—"That "nothing in this section shall be so construed as to apply to any "bank company or corporation exercising banking powers and "privileges."

I.

By the 2nd section of the 9th article of the Constitution, it is provided that "the General Assembly shall provide for "levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his or her property, such value to be ascertained by some person or persons "to be elected or appointed, in such manner as the General "Assembly shall direct," although it is provided in the same section that "the General Assembly shall have power to tax "peddlers, auctioneers, brokers, merchants, commission merchants, showmen, inn keepers, grocery keepers, toll bridges, "and ferries, and persons using and exercising franchises and "privileges, in such manner as they shall from time to time "direct."

1.—This section expressly provides that "every person and "corporation shall pay a tax *in proportion to the value of his or "her property*," it being the language and clear intent of the Act, that all taxes on *property* should be uniform, and that no discrimination should be made by law between persons or corporations of any kind, so far, at least, as should relate to a tax on property.

2.—There is nothing in the last clause of the section limiting or restraining the words first used. First,—Because "persons "using and exercising franchises and privileges," are regarded as of the same character and to be governed by the same rules as the various persons previously named, viz: "peddlers, auc-"tioneers, brokers, merchants, inn keepers, toll bridges and "ferries, &c." It, clearly, was not designed as a tax on property

in either of these cases, but in the nature of an assessment for a license granted, and in lieu of a tax on the property embarked in the business. It certainly did not intend to authorize *both* a tax on property embarked in the business, and a tax for a license to conduct the business. Second,—The "franchises and privileges" referred to were those of "persons," and were not intended to include corporations. This appears from the fact that the word *persons* is alone used, and also from the fact that in the first part of the section it is expressly provided that *every corporation* shall pay a tax in proportion to the value of its property, which would be perfectly nugatory if *every corporation* should be included in the last clause, and subject to taxation without reference to the value of its property, and at the pleasure of the General Assembly.

3.—If, however, it be claimed that all corporations are the *franchises* refered to, it certainly means something distinct from the tax on the property of the corporation, as specified in the previous part of the section. If it means a tax on the *franchise*, it is a very different thing from the tax on the property of the corporation, as appears from the decision of the Supreme Court, in the case of Gordon vs. Appeal Tax Court (3 How. Rep. 133), in which it was decided that "the charter of a bank is a fran-"chise which is not taxable as such, if a price has been paid for "it which the Legislature accepted; but the corporate property "of the bank is separated from the franchise, and may be taxed, "unless there is a special agreement to the contrary."

II.

In the 5th section of the 9th article of the Constitution (1 Stat. of Ill. p. 71), it is provided that "the corporate authorities of "counties, townships, school districts, cities, towns and villages "may be vested with power to assess and collect taxes for corporate purposes, *such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.*

This provision of the Constitution makes no exception whatever, and applies to all property, by whomsoever held, and declares that the taxes on such property shall be *uniform*, whether held by individuals or corporations.

It also shows that the exceptions stated in the 2nd section of the same article above referred to, did not and could not apply to a tax on property anywhere, but referred to a duty exacted for a license to certain classes of persons there enumerated. It certainly, in express terms, required that, so far as concerned the taxes by counties, cities, towns and villages, &c., there should be perfect uniformity.

It is apparent, therefore, that the provision in the 11th section of the Revenue Act, above referred to, allowing a deduction of debts due by a person or corporation, from the amount of the assessment, for his moneys and credits, and yet declaring in the proviso that this deduction shall not be made in the case of a bank, is in violation of the two foregoing sections of the Constitution of Illinois, and, therefore, void.

It imposes a heavier tax on the banks than on similar property held by other corporations, for it is evidently immaterial whether a law provides in terms for valuing the property of banks higher than other corporations, or refusing them the deduction which is made to others under similar circumstances.

III.

It is also provided that in the 15th article of the Constitution, in relation to the two mill tax, applicable to the principal of a certain portion of the public debt, that "there shall be annually "assessed and collected a tax of two mills *upon each dollar's* "*worth of taxable property*, in addition to all other taxes, to be "applied as follows, &c."

It appears, thus, that this is a certain and fixed rate upon *every dollar's worth of taxable property*, and certainly does not countenance any discrimination between the owners of property, or any deduction to one class of owners which is not to be applied to all others. It also declares that *the other State revenue* is assessed and collected *in the same manner*, showing, when taken together, that it is by a *uniform tax on property* that all the revenues for the State, counties, &c., are to be collected.

IV.

It also appears by the 6th section of the Act of 1857, in relation to "banks," &c., (1 Stat. 129), it is expressly provided that

"every bank," &c., "shall be listed by the President or Cashier "thereof, and assessed and taxed in the same manner as the "other personal and real estate of the county and town in which "such bank or banking association is located."

If this Act is to be considered as in force (which is denied), it expressly provides that the banks shall be "*assessed and taxed* "*in the same manner as the other personal and real estate of the* "*county, &c.*," and in that respect conforms to the Constitution, and repeals any prior and inconsistent provision.

V.

By the 6th section of the General Banking Law, passed in 1851, and approved by the people, as required by the Constitution, it is expressly provided that the "rate of taxation shall be "the same as that required to be levied on other taxable pro- "perty by the revenue laws of the State."

This law is claimed to be in force, as it could not be altered, except by a vote of the people under the Constitution, as has already been shown.

III.

The 6th section of the Act of February 14th, 1857, provides that "The *Capital Stock* of every bank or banking association "paid in or secured to be paid in, except so much thereof as is "invested in real estate, which shall be taxed as real estate, as herein provided, together with its surplus profits or reserved "funds, and all the real estate of every such company, shall be "listed by the President or Cashier thereof, and assessed or "taxed in the same manner as other personal and real estate of "the county and towns in which such bank or banking associa- "tion is located."

The question is, what is the meaning of the words "*Capital Stock*," in this section?

1.—The uniform understanding of that term, as applied to banks and other corporations, is the amount represented by *shares*, in the hands of stockholders, severally, of the amount specified in the Act of Incorporation or articles of association.

2.—The amount of Capital Stock in any corporation does not purport to show the amount of business transacted by such corporation, nor the amount of property held by it. A manufactu-

ring company, for instance, may, with a capital stock of $50,000, manufacture goods to any amount, may receive the notes of the persons to whom the goods are sold, and give their own notes in the course of their business, to the amount of a million of dollars, but the capital stock is not increased or affected by so doing.

3.—A bank with a capital of $50,000 may, under the banking laws of Illinois, confessedly receive deposits to an indefinite amount, and may loan money, buy and sell gold and silver coin, and discount notes and bills; they may receive these deposits to the amount of millions of dollars, and transact business to the same extent, and yet, in the case supposed, the *Capital Stock* of the bank will remain the fixed sum of $50,000. And in such case, under this law, the tax to be paid by the bank would be, very justly, on its capital stock, and the *profits* of its business, "its surplus profits or reserved funds," and, as in the case of manufacturing companies, not upon the amount of business done by them.

3.—But it is contended that, although such would be the rule in the case of a bank of discount and deposit, yet, that a different rule should be applied when a bank, on the deposit of State Stocks, has received an additional amount of circulating notes, and that the amount of stocks deposited, or circulating notes issued, is to be the amount upon which the tax is to be assessed.

5.—There is nothing in the reason of the thing, or analogy to other banks, to justify any such construction, nor in analogy to any other corporation, and would be an unjust and unreasonable discrimination between institutions engaged in similar business.

6.—The policy of the Revenue Law of the State is opposed to any such construction. In the case of corporations and individuals, when a tax is laid on moneys and credits, the amount due by the corporation or individual is deducted, and thus, substantially, the tax is only laid upon the balance or profits of the business.

7.—There is nothing whatever in the General Banking Law of 1851, or any subsequent Act, which imposes a tax upon the bank to the amount of its circulating notes, or requires the capital of the bank to be equal to the amount of the circulating notes issued to it. The statute requires that ever bank shall have a capital of at least $50,000 paid in, but it authorizes the issue of

circulating notes to an individual, on the deposit of State stocks, without his becoming a banking corporation, or being in any way subjected to the provisions of law applicable to banks; and there seems to be no reason in the spirit or letter of the law why circulating notes should not be issued to banks on the deposit of stocks, beyond the amount of their capital stock.

8.—The 10th section of the general banking law of 1851 (1 Stat. 113) shows that the legislature understood that the amount of the capital stock of the banks was the amount represented by *shares* in the hands of *stockholders*. It provides that "The *shares* "of said association shall be deemed personal property, *subject* "*to taxation*, and shall be transferable on the books of the asso- "ciation in such manner as may be agreed on in the articles of "association, and any person becoming a *shareholder* by such "transfer, shall in proportion to his shares succeed to all the "rights and liabilities of shareholders by whom the transfer was "made."

The same section provides that, "Taxes shall be levied on and "paid by the corporation, and not upon the individual stockhold- "ers." This provision is for the sake of convenience and for the benefit of the State which thus secures the payment of taxes on all the shares of the bank wherever held, but does not increase the amount to be paid on the stock. Suppose the stockholders themselves had been required to pay the tax on the stock individually held by them, it could have been only on the stock distributed to and actually held by them. The tax being paid by the corporation does not increase the number of shares nor the amount to be paid.

9.—The provisions of the 8th and 9th sections of the Act of 1857 (1 Stat. 129), fully sustain these views.

The Auditor is required to be satisfied that every bank has a "bona fide cash capital paid in" of at least fifty thousand dollars, "before he shall issue any circulating notes or bills to any such "bank;" and the 9th section provides that "no more circulating "notes shall be issued, under any circumstances, to any bank or "association organized under this Act, until the Auditor shall be "satisfied that such bank or association has such actual capital "as is required in the 1st section of this Act."

It is most distinctly implied by the language of this Act, that

if the Auditor is satisfied that there is an actual capital of $50,000, he may issue circulating notes for stocks deposited, beyond the amount of the capital. And if, as is claimed, the amount of State Stocks deposited and notes issued is the sole measure of the capital, these provisions would have been idle and nugatory, and the investigations of the Auditor of no avail, as in every instance the stocks themselves were in his possession, and their value in market known to him.

10.—It appears positively by the evidence in this case (which is uncontradicted) given by the President of the Bank, "that the "amount of capital stock paid in at that time, (April, 1857), "was fifty thousand dollars," and "that after the passage of the "Act of the Legislature of the State of Illinois, in 1857, amenda- "tory to the General Banking Law of said State, the said Auditor "demanded of said bank the proof that fifty thousand dollars of "actual cash capital had been actually paid in, or secured to be "paid in to said bank, and that such proof was filed as required, "in said Auditor's office; that there is no other or further cash "capital paid in to said bank, than the said sum of fifty thou- "sand dollars."

11.—The foregoing suggestions are designed as an answer to the 5th, 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th questions and points presented in this case, and incidentally and by inference to the 7th question.

CHICAGO DEMOCRAT PRINT, 45 LA SALLE STREET.