

Opinion of the Court.

NEWARK BANKING COMPANY v. NEWARK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF NEW JERSEY.

Argued March 14, 15, 1887. — Decided April 4, 1887.

There is no material difference between this case and *Mercantile Bank v. New York City*, ante, 138, and on the authority of that case this is affirmed.

In equity. Decree below dismissing the bill. Complainant appealed. The case is stated in the opinion of the court.

Mr. Charles W. Wells and *Mr. John W. Taylor* for appellant.

Mr. Joseph Coult and *Mr. John R. Emery* for appellees.

MR. JUSTICE MATTHEWS delivered the opinion of the court.

This is a bill in equity filed by the appellant, a national bank organized under the act of Congress, doing business in the city of Newark, New Jersey, the object and prayer of which are to enjoin the collection of taxes assessed upon the individual shareholders therein, on the ground that, according to the laws of New Jersey, under which the assessment has been made, the rate of taxation is greater than that assessed upon the moneyed capital in the hands of the individual citizens of the state. This alleged inequality, it is contended, results from certain exemptions authorized by the laws of New Jersey, whereby a material portion of the moneyed capital in the hands of individuals is freed from taxation.

According to the allegations of the bill, these exemptions consist, 1st, of the shares of capital stock held by individuals in all private corporations of the state, "except banking institutions, and except those which by virtue of any contract in their charters or other contracts with this state are expressly exempted from taxation, and except mutual life insurance

Opinion of the Court.

companies specially taxed," which exemptions, it is charged, amount to the sum of \$301,485,000; and, 2d, of the deposits in savings banks, amounting to the sum of \$24,017,916.99.

The 15th section of the act of April 11, 1866, establishing these exemptions, is as follows (Revision of 1877, p. 1156): "That all private corporations of this state, except banking institutions, and except those which by virtue of any contract in their charters or other contracts with this state are expressly exempted from taxation, and except mutual life insurance companies specially taxed, shall be and are hereby required to be respectively assessed and taxed at the full amount of their capital stock paid in, and accumulated surplus; but any real estate which such corporations may lawfully own in any other state than this state, shall not be liable to be estimated in such accumulated surplus, and the persons holding the capital stock of such corporations shall not be assessed therefor; and such corporations as have no capital stock other than those above excepted, shall be assessed for the full amount of their property and valuable assets, without any deductions for debts and liabilities; but depositors in savings banks, taxed by virtue of this section, shall be exempted from taxation on their personal estate to the amount of their deposits; provided, that premium notes held by life insurance companies shall in no case be considered as future premiums, but shall be included in the valuable assets of said company."

Under the statutory provision for the taxation of bank shares in New Jersey, the stock of every bank, national as well as state, is assessed for taxation in the place where the bank is located to all non-resident stockholders thereof, the taxes assessed on which are payable by the bank itself for their account; resident stockholders being taxed on their shares in the townships or wards in which they respectively reside. The rate of taxation is the same as that upon other personal property held by individuals, and is subject to deduction on account of debts due by the owner.

It is not claimed that the assessments complained of in this case are unequal or illegal, unless made so by the exemptions authorized by the 15th section of the act of April 11, 1866.

Statement of Facts.

There is no material difference between the legislation of New Jersey on this subject and that of New York, as considered in the case of *The Mercantile National Bank of the City of New York v. The Mayor, Aldermen and Commonalty of the City of New York, and George W. McLean, Receiver of Taxes*, just decided. This case is, therefore, necessarily governed by the decision in that.

The decree of the Circuit Court is accordingly

Affirmed.

MR. JUSTICE BRADLEY and MR. JUSTICE BLATCHFORD took no part in the decision of this case.

CONCORD v. ROBINSON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ILLINOIS.

Argued March 24, 1887. — Decided April 4, 1887.

A grant to a municipal corporation of power to appropriate moneys in aid of the construction of a railroad, accompanied by a provision directing the levy and collection of taxes to meet such appropriation, and prescribing no other mode of payment, does not authorize the issuing of negotiable bonds in payment of such appropriation.

The power given by the act of March 24, 1869, of the legislature of Illinois, relating to the Chicago, Danville and Vincennes Railroad, to townships, towns, and cities, which had voted to contribute aid in the construction of said road, to borrow money and issue bonds in payment of such contributions, if not acted upon prior to July 2, 1870, was withdrawn by the constitution of Illinois of 1870, and could not, thereafter, be exercised.

Subscriptions and donations in aid of railroads, voted by municipal corporations of Illinois, prior to July 2, 1870, such vote being authorized by laws in force when it was taken, could be completed after that date, according to the conditions attached to the vote, or upon terms that did not increase the public burdens, notwithstanding the provision in the constitution of 1870, that no municipality "shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of, such corporation."

This was an action at law to recover on coupons attached to negotiable bonds issued by the plaintiff in error. A jury was