

Opinion of the Court.

LOUISVILLE v. THIRD NATIONAL BANK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KENTUCKY.

No. 364. Argued February 23, March 2, 1899. — Decided May 15, 1899.

Third National Bank of Louisville v. Stone, Auditor, ante, 432, followed in holding that taxes like those here in question are illegal, because levied upon the property and franchise of the bank, and not upon the shares of stock in the names of the shareholders.

THE case is stated in the opinion of the court.

Mr. Henry L. Stone for Louisville.

Mr. Alexander Pope Humphrey, Mr. Frank Chinn, Mr. James P. Helm and *Mr. John W. Rodman* for the bank.

MR. JUSTICE WHITE delivered the opinion of the court.

The appellee, the Third National Bank, filed its bill to enjoin the collection of certain taxes, relying upon grounds in all respects like unto those alleged in case No. 404, *ante*, p. 432. There was, however, this difference between the facts of the latter case and those arising on this record: In this case the taxes sought to be enjoined were levied prior to the renewal of the charter of the bank. Because of this difference the court below concluded that the want of power to assess and levy was conclusively established by the presumption of the thing adjudged arising from the decree of the Court of Appeals of Kentucky, to which we have referred in case No. 404. We need not, however, consider the question of *res judicata* upon which the court below based its conclusion, as we have in case No. 404, just announced, held entirely without reference to the plea of *res judicata*, that taxes in form exactly like those here in question were illegal because levied upon the property and franchise of the bank, and not upon the shares of stock in the names of the shareholders. It follows, therefore, that the decree below which restrained the collection of the taxes was correct, and it is therefore

Affirmed.