

Opinion of the Court.

FIRST NATIONAL BANK OF LOUISVILLE *v.*
LOUISVILLE.

SAME *v.* STONE.

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

Nos. 635, 634. Argued February 28, March 2, 1899. — Decided May 15, 1899.

The decision of the court below that taxes imposed upon the franchise or intangible property of a national bank may be regarded as the equivalent of a tax on the shares of stock in the names of the shareholders, and hence did not violate the act of Congress in that respect, was erroneous and is reversed.

THE case is stated in the opinion.

Mr. Henry L. Stone for Louisville.

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

MR. JUSTICE WHITE delivered the opinion of the court.

In these two cases the appellant filed its bills to enjoin the assessment and collection of certain taxes. The grounds upon which the prayer for relief in each case was rested were substantially as follows:

First. That the taxes in question were levied upon the franchise and property of the bank, and not upon the shares of stock in the names of the shareholders, and were therefore illegal; second, that the taxes were discriminatory, because, as a consequence of the exemption of certain state banks from taxation by special contract, the property of the bank was taxed at a higher rate than other moneyed capital, in violation of the act of Congress; and, third, that the taxes were illegal, because not in conformity to the state constitution and certain provisions of the state laws.

The court below decided that, although the taxes were im-

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posed or contemplated to be assessed on the franchise or intangible property of the bank, nevertheless they were the equivalent of a tax on the shares of stock in the names of the shareholders, and hence did not violate the act of Congress. It moreover held that the remaining grounds were without merit. 88 Fed. Rep. 409.

The law under which the taxes in question were levied is the same one which was considered in *Owensboro National Bank, Plaintiff in Error, v. The City of Owensboro and A. M. C. Simmons*, 173 U. S. 664. The theory of equivalency upon which the court below decreed the taxes to be legal was in that case fully examined, and held to be unsound.

It follows that the decrees below rendered in these cases were erroneous. It is therefore ordered that said decrees be *Reversed, and the cases remanded to the lower court with directions for such further proceedings as may be in conformity with this opinion.*

LOUISVILLE *v.* BANK OF LOUISVILLE.STONE, Auditor, *v.* SAME.

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

Nos. 359, 358. Argued February 28, March 2, 1899. — Decided May 15, 1899.

Stone v. Bank of Commerce, 174 U. S. 412, affirmed and applied to the point that the agreement of the commissioners of the sinking fund of Louisville and the attorney of the city with certain banks, trust companies, etc., including the Bank of Louisville, that the rights of those institutions should abide the result of test suits to be brought, was *dehors* the power of the commissioners of the sinking fund and the city attorney, and that the decree in the test suit in question did not constitute *res judicata* as to those not actually parties to the record.

Citizens' Savings Bank of Owensboro v. Owensboro, 173 U. S. 636, also affirmed and applied.

On questions of exemption from taxation or limitations on the taxing power, asserted to arise from statutory contracts, doubts arising must be resolved against the claim of exemption.