

pleasure and exclusively for its own profit. Notwithstanding the special characteristics of electrical energy, the company is engaged in producing and selling an article of trade. *Utah Power & Light Co. v. Pfof*, 286 U. S. 165, 180, 181. The product is property. The fact that a privilege has been received from the Federal Government does not exempt that property or the local business in producing and selling it from the burdens of taxation otherwise valid. *Railroad Company v. Peniston*, 18 Wall. 5, 33; *Choctaw, O. & G. R. Co. v. Mackey*, 256 U. S. 531, 537; *Willcuts v. Bunn*, 282 U. S. 216, 226; *Fox Film Corp. v. Doyal*, *supra*; *Susquehanna Power Co. v. Tax Commission (No. 1)*, 283 U. S. 291, 294. Thus, the "permissive grant" by the Federal Government to a telegraph company to use the military and post roads of the United States for its poles and wires "did not prevent the State from taxing the real or personal property belonging to the company within its borders or from imposing a license tax upon the right to do a local business within the State." *Williams v. Talladega*, 226 U. S. 404, 416; *Western Union Telegraph Co. v. Massachusetts*, 125 U. S. 530, 549; *Western Union Telegraph Co. v. Gottlieb*, 190 U. S. 412, 423. The complainant is in no better position with respect to the tax here in question.

Decrees affirmed.

UNION BANK & TRUST CO. v. PHELPS.

CERTIORARI TO THE SUPREME COURT OF ALABAMA.

No. 346. Argued January 17, 1933.—Decided February 6, 1933.

1. Discrimination in state *ad valorem* taxation between corporations receiving deposits and doing a commercial banking business, and their corporate and individual competitors in the business of lending money, by taxing the shares of the former and taxing the latter on a more favorable basis, or exempting them,—held consistent with the equal protection clause of the Fourteenth Amendment. P. 185.

2. Within the intendment of the Fourteenth Amendment, shares of national banks and shares of state banks are not essentially the same when considered from the standpoint of taxation; nor do they become so merely because the State has attempted to subject them to like treatment. P. 186.
 3. Where a State's scheme of taxation includes taxes on shares of state and national banks and less onerous burdens on other competing moneyed capital, so that the tax as to national banks is invalid and not enforced, the resulting discrimination against the state banks does not violate the equal protection clause of the Fourteenth Amendment. P. 187.
 4. The implied exemption from state taxation of federal instrumentalities, such as national banks, is not a source of congressional power to control state action in other matters. P. 188.
- 225 Ala. 238; 142 So. 552, affirmed.

CERTIORARI, 287 U. S. 588, to review the reversal of a judgment allowing recovery of money from a state tax collector.

Messrs. William B. White and John S. Coleman for petitioner.

I. Alabama has classified as a single class for the purposes of *ad valorem* taxation the shares of state and national banks. Gen. Acts, Ala., 1923, p. 152, § 6.

II. By reason of the existence of untaxed money capital and corporate shares in actual and substantial competition with the national banks, the tax levied upon the shares of the national banks became invalid. Op. Atty. Gen. of Ala., Jan. 29, 1932; *Ward v. First Nat. Bank*, 142 So. 93; *Mercantile Nat. Bank v. New York*, 121 U. S. 138; *Merchants Nat. Bank v. Richmond*, 256 U. S. 635; *First Nat. Bank v. Anderson*, 269 U. S. 341; *First Nat. Bank v. Hartford*, 273 U. S. 548; *Minnesota v. First Nat. Bank*, 273 U. S. 561; *Georgetown Nat. Bank v. McFarland*, 273 U. S. 568; *Iowa-Des Moines Nat. Bank v. Bennett*, 284 U. S. 239.

III. The Fourteenth Amendment requires equal treatment with regard to *ad valorem* taxation of all property and taxpayers classified as a single class for taxation pur-

poses. *Central State Bank v. Bennett*, 284 U. S. 239; *Sioux City Bridge Co. v. Dakota County*, 260 U. S. 44; *Greene v. Louisville & I. R. Co.*, 244 U. S. 499; *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20; *Cummings v. Merchants Nat. Bank*, 101 U. S. 153; *Cumberland Coal Co. v. Board of Revision*, 284 U. S. 23; *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350; *Munn v. Des Moines Nat. Bank*, 18 F. (2d) 269; *Ashland County Bank v. Butter-nut*, 241 N. W. 638.

IV. This Court is not bound by the construction placed by a state court upon state statutes or the operation and effect thereof as applied and enforced by the State where rights secured by the Federal Constitution are involved.

V. Shares of national and state banks are the same species of property for *ad valorem* taxation, and no discrimination can be made in favor of one and against the other. See cases under III, *supra*, and also the following: *State Bank v. Board of Revenue*, 91 Ala. 217; *Commercial State Bank v. Wilson*, 53 S. D. 82; *Central Nat. Bank v. Sutherland*, 113 Neb. 126; *State Bank v. Endres*, 109 Neb. 753; *State v. Mady*, 83 Mont. 418; *Security Savings Bank v. Board of Review*, 189 Iowa 463.

VI. In view of the untaxed competitive national banks and other moneyed capital and corporations, the *ad valorem* tax denies to petitioner and its shareholders the equal protection of the laws contrary to the Fourteenth Amendment. Cases under III, *supra*, and also the following: *Royster Guano Co. v. Virginia*, 253 U. S. 412; *Louisville Gas & Elec. Co. v. Coleman*, 277 U. S. 32; *Airway Elec. App. Corp. v. Day*, 266 U. S. 71; *Schlesinger v. Wisconsin*, 270 U. S. 230; *Quaker City Cab. Co. v. Pennsylvania*, 277 U. S. 389; *Southern Ry. Co. v. Greene*, 216 U. S. 400.

Messrs. Thomas E. Knight, Jr., Attorney General of Alabama, and Frontis H. Moore, Assistant Attorney General, for respondent.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Union Bank & Trust Company, the petitioner, organized under the laws of Alabama and located in Montgomery County, receives deposits and carries on a general commercial and savings bank business. It sued respondent in a state court to recover \$2521.69, alleged to have been illegally exacted as taxes assessed for the year ending September 30, 1931. The assessment followed § 6, Revenue Act of Alabama, 1923 (General Acts, 1923, 152), which directs—"Every share of any incorporated bank or banking association incorporated under the laws of this State, or any other state, or of the United States, shall be assessed for taxation in the county, and in the city or town where such bank is located at sixty per cent of its fair and reasonable market value."

During 1930, 1931 and 1932 there were building and loan associations, industrial loan companies and corporations, and industrial banks in Montgomery County, which loaned money in substantial competition with petitioner to the extent of hundreds of thousands of dollars, the shares and the capital of which were exempted from ad valorem taxes. Also, there were mortgage companies and corporations and individuals, persons, firms and associations engaged in like business and employing moneyed capital to the extent of many thousands of dollars in substantial competition with petitioner, which were either untaxed or definitely exempted.

The federal court had ruled that shares of National Banks in Alabama could not be subjected to taxation under § 6, Act of 1923, since the tax was not laid in conformity with § 5219, U. S. Rev. Stats., as amended by the Acts of March 4, 1923, c. 267, 42 Stat. 1499, and March 25, 1926, c. 88, 44 Stat. 223, which only permits taxation of shares of national banking associations at a rate no

greater than the one required of other moneyed capital in the hands of individual citizens coming into competition with the business of such associations. The state officers had accepted these decisions as correct declarations of the law.

Petitioner based its claim to recover upon the theory that the tax assessed against its shares had been exacted in violation of the equal protection clause of the XIV Amendment; also in violation of §§ 211 and 217, Constitution of Alabama, which provide that all taxes shall be assessed in exact proportion to value and the property of private corporations, associations, and individuals shall be taxed at the same rate.

The trial court gave judgment for petitioner. The Supreme Court reversed this action and denied any recovery, holding that the legislature had not exceeded its powers in making classifications and exemptions; and, specifically, that there was no violation of the Federal Constitution.

Only the federal question is before us. Was the petitioner denied equal protection of the laws?

Because of existence within the State of untaxed moneyed capital and shares of corporations in actual competition with National Banks, the shares of the latter during the years in question were not subject to ad valorem taxation under § 6, Revenue Act of 1923, or otherwise. And the State Supreme Court so held.

We cannot say that the State Legislature exceeded its power to make reasonable classification when it directed that moneyed capital or the property and shares of building and loan associations, industrial loan corporations, industrial banks, mortgage companies, etc., should be exempt from ad valorem taxation, or taxed on a different basis from the one prescribed for banks accepting deposits and doing a general commercial business, notwithstanding actual competition between them.

Mere competition between them is not enough to show two concerns must be burdened alike. The State Legislature reasonably might have determined that there was fair ground for distinction; and upon the record we may not hold that its action was arbitrary, capricious or wholly unreasonable.

There was sharp disagreement in the court below, but none of the judges suggested disapproval of the view just stated. The minority did not discuss the federal question, but found violation of the uniformity clause of the State Constitution.

The doctrine applicable here was recently expounded in *Ohio Oil Co. v. Conway*, 281 U. S. 146, 159, and need not be restated.

Counsel for petitioner stoutly maintain: Shares of State and National banks belong to the same species of property. Not only are they essentially similar, but for many years the Revenue Statutes of Alabama have put them in the same category. Under the scheme of taxation presently existing in the State, National bank shares escape assessment while shares of State banks are subject thereto. Consequently, the latter are deprived of the equal protection of the laws guaranteed by the XIV Amendment.

A sufficient answer is that within the intendment of the XIV Amendment shares of National and State banks are not essentially the same when considered in connection with taxation. Nor do they become so merely because the State has attempted to subject them to like treatment.

The several States lack power to tax National bank shares except as expressly permitted by Congress. *Owensboro National Bank v. Owensboro*, 173 U. S. 664, 668; *Des Moines National Bank v. Fairweather*, 263 U. S. 103, 106; *First National Bank v. Anderson*, 269 U. S. 341, 347. This is enough to negative the idea that shares of

National and State banks are essentially the same for purposes of taxation. And the Alabama Supreme Court has held that under her Constitution, although the legislature may have included them in the same class of taxable objects, there is permissible distinction between them.

To accept the doctrine that as the States can only tax a federal instrumentality when permitted by Congress, therefore they can not tax competitors of such instrumentalities within their general jurisdiction in some other fashion without violating the XIV Amendment would be both illogical and destructive of their proper independence.

Such instrumentalities are exempted from state taxation without the express consent of Congress, by the Federal Constitution. They are of a class wholly distinct from the property of ordinary corporations or individuals, and this fact cannot be disregarded by the State. If the State sees fit to tax unrestricted property within her jurisdiction and to omit National Bank shares, the classification cannot be said to be arbitrary and wholly unreasonable—the basis of it is plain enough. It may be vastly more important for the State to omit National Bank shares and tax ordinary moneyed capital according to a plan not permissible in respect of National Bank shares rather than conform to the standard prescribed by Congress. There is nothing to indicate that Congress ever supposed that mere establishment of a National Bank within a State could upset the scheme for taxation, theretofore entirely proper, by producing conflict with the XIV Amendment. This view would subject the taxing power of the State to the will of Congress far beyond what is necessary for the protection of federal agencies. The constitutional inhibition against taxing these agencies does not abridge the taxing power of the several States in respect of other property. The implied exemption is a shield for federal

agencies—not the source of congressional power to control State action in respect of other matters.

Iowa-Des Moines National Bank v. Bennett, 284 U. S. 239, much relied upon by petitioner, is not controlling—the circumstances and issues there involved were wholly different from those here presented. The Iowa Supreme Court found, or assumed, and this was accepted here, that through the wrongful action of state taxing officials the complaining banks had been subjected to intentional, arbitrary and systematic discrimination through assessments greatly in excess of those imposed upon competing moneyed capital; and the unequal exactions complained of were in violation of the Iowa laws. The points for decision in this Court concerned the effect of unauthorized action by state officers (Could such action be attributed to the State?) and the proper remedy. Unlawful inequality of treatment as between the banks and competing capital was not controverted. There was no occasion to consider whether failure by a State to tax National banks while subjecting her own banks to taxation would occasion discrimination against the latter forbidden by the XIV Amendment.

The judgment of the court below is

Affirmed.

DICKSON ET AL. *v.* UHLMANN GRAIN CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 63. Argued November 16, 17, 1932.—Decided February 6, 1933.

1. Contracts between broker and customer for pretended purchases and sales of grain for future delivery, which do not contemplate that any grain shall be actually bought, sold, or delivered on behalf of the customer, violate the Missouri Bucket Shop Law, when made and executed in that State. Pp. 192, 194.
2. To an action by the broker for commissions and advances, it is a bar that the contracts are thus invalid. P. 196.