LEGAL INTELLIGENCE.

Bankers' and Brokers' Tax. United States Clecuit Court of New York

Before Judge Nelson.—Luther C. Clark and
others vs. Sylvester P. Gilbert and Sheridan
Shook.—The bill is filed in this case against the

defendants, who are the assessors and collectors of the Thirty-second Collection District of New York, under the Internal Revenue laws, for the purpose of restraining them from the assessment and collection of a tax claimed to have accrued against the plaintiffs as bankers, doing business as brokers, within said district, under the following circumstances:-

The plaintiffs have a license as bankers, and have from time to time received at their banking house stocks, bonds, and bullion for sale; and also have, during the same time, received bills of exchange and promis-ory notes for discount and sale; and did discount and sell the same on and for the account of the parties from whom received, and charged the customary compensation as bankers; and also during the time afore-sain did, at their banking house, lend and ad-vance moneys to various parties on stocks, bonds, and bullion, and atter such advances and loans did sell said stocks, bonds and bullion on account of the parties from whom the same were received, and to whom the moneys were lent and advanced, deducting from said sales the moneys so loaned and advanced, with the interest and customary charges as bankers; and also bought and sold stocks, bonds, etc., on their own account, and not on commission or for others. The tax claimed as having accrued out of the above dealings is one-twentieth of one per centum monthly on all the sales of the

stocks, bonds, etc., under the ninety-ninth section of the act (13 U. S. St. p. 273), which imposes the tax on brokers, and "backers doing business as brokers." The question in the case is, whether or not the plaintil's in carrying on the aloresaid business under a banker's license are to be regarded as bankers doing business as prokers. The first subdivision of the seventy-anth section (p. 251) enacts that bankers employing capital not exceeding \$50,000 shall pay \$100 for a license, and two dollars for every thousand over this amount, and then defines the term banker:—"Every person, firm, company, etc., having a place of business—(1) where credits are opened by the deposit or collection of money or currency, subject to be paid or remuted upon draft, check, or order; (2) where money is advanced or loaned on stocks, bonds, buttion, bills of exchange, or promissory notes: (3) where stocks, bonds, bullion, bills of ex change or promissory notes are received for dis-count or sale, shall be regarded a banker under this act." Besides the license fee exacted, the banker, under the one hundred and tenth sec tion (page 277), pays a tax of one-twenty-tourth of one per centum monthly upon the average amount of deposits—one-twenty-lourth of one per centum monthly upon the average amount of the capital of his bank beyond the amount myested in the United States bonds—one-twellen of one per centum monthly on the average amount of circulation, it issued by any bankand in addition one-sixth of one per centum monthly on the amount of circulation beyond ninety per centum of the capital. The license fee and the above tax are the burdens imposed on the banker for the privileges conferred, Now, among these is the privilege of doing the business set forth in the bill of complaint, and to which we have referred at large; and yet it is claimed the plaintiffs are hable

to the additional tax as prokers specified in the ninety-ninth section of the act. According to this construction the license or privilege of the banker would be of little value. He might, indeed, receive deposits and pay them out, advance or lend money on stocks, bonds, etc., but in case of desault of repayment he must not sell the pledge to reimburse Limself — he may receive stocks, bonds, etc., for discount or sale, but is not at liberty to sell. If he does, it is insisted he instantly becomes a broker, and hable to the broker's monthly tax, in addition to the banker's, which he has already paid. We cannot agree to this view of the act. On the contrary, we are satisfied the banker is, both by express terms as by necessary implication, empowered to carry on the busi-

ness authorized under his license, to its practi-cal and useful results. That, when he is authorized to lend or advance money on stocks, bonds, etc., he has the right, in case of default in the repayment, to convert the security into money by way of reimbursement-and, when authorized to receive stocks, bonds, etc., for sale, he may sell the same without, in instance, making himself a broker. The United States vs. Fisk et al., decided at the last term, carried the privileges of the banker far beyond the present case; for it was there held that he could purchase and sell stocks, bonds, etc., for himself, and on his own account, under his license-a business not specified in the definition of a banker. That case, in effect, decided that any business which a banker could carry on, as such, did not fall within the ninetyninth section of the act. The case of the plain-tiffs, as set forth in the fourth paragraph of the bill, is, in substance, as follows:-That in carrying on their business as bankers they purchase stocks, bonds, etc., for others, but make the purchases in their own name, and advance their own money, and take the transfers in their own name, and hold the stocks as security for repayment by the person for whom purchased and on receiving such repayment, interest, and eustomary charges, deliver the stocks, bonds, etc., as per agreement; or, in default of renay-ment, they sell the same to reimburse them-selves. This business is not only outside of the business of a banker as defined by the act, but comes directly within that of a broker, and subject to the tax under the ninety-ninth section. But it is urged that if the plaintids, in any of their dealings in stocks, bonds, etc. are brought within the category of bankers doing business as brokers, their whole business as bankers is thereby brought within it, and subjected to the broker's tax; and this extraordinary proposition is supposed to be decided in the case above referred to. The ninth subdivision (page 252), declaring who shall be a broker, is as follows:—"Every person, firm, or company, etc. (except such as hold a license as a banker), whose business it is as a broker to negotiate purchases or sales of stocks, bonds, etc., shall be regarded as a broker." The exception takes the banker out of the category or broker, and to make it more clear what was intended by the exception, a proviso is added, "that any person holding a license as a banker, shall not be required to take out a license as a broker," meaning, obviously, that he may no business as a broker under his license as a banker. But surely there is nothing in the provision which thus permits the business both of a banker and broker to be carried on under the banker's license that suggests the idea, or gives any countenance to it, that dealing in both capacities merges the banker into the broker, so as to subject all his dealings to the broker's tax. The fair and natural inference would seem to be The fair and natural inference would seem to be the other way, namely, that the broker is merged in the banker. But we suppose the reasonable and proper conclusion is, that although the license of the banker authorizes him to do the business of a broker without further payment of money, yet, so far as he may do that business he is to be regarded as a broker, and must pay the broker's tax. This, we think, is not only the natural conclusion and fair legal effect from the provisions of the law refetered to, but is confirmed, as will be seen, by the lanbut is confirmed, as will be seen, by the language of the ninety-ninth section, imposing the tax on brokers, as follows:—"That all brokers and bankers doing business as brokers,

shall be subject to pay the following duties,

etc., clearly enough implying that the banker, besides carrying on his own business,

banker, besides carrying on his own business, may also engage in business as a broker; but in such cese, and as respects the business done as a broker, he must pay the tax imposed, over and above what he has already paid as a banker. This view of the statute was taken in the case of the United States vs. Fisk et al., and is stated in the opinion in a few words:—"Now, a banker," says Mr. Justice Grier, "pays a much higher license tax than a broker and is

a much higher license-tax than a broker, and is permitted to 'prosecute or carry on' the business

or profession of a broker without paying any further license; but, if he prefers, he may not combine that business with his own." Without

pursuing the case further, an injunction must

issue in conformity with the above opinion. If any difficulty arices in the settlement of this order, it can be referred to me.

John E. Burrill and William M. Evarts for plaintiffs; Samuel G. Courtney, United States

LIBRICATIVE PACKING. District-Attorney, for detendants.

Breinton in a Great Cotton Case. An important decision has been made by Judge Nelson in the United States Circuit Court of the Southern District of New York, quantity of abandoned cotton was in 1865 and 1866 seized in the State of Georgia by agents of the Treasury Department, and forwarded for sale on government account to Simeon Draper, Government agent for the sale of confiscated cotton. The claimants for the property moved to have the case removed for adjudication from the United States Circuit Court to the State Court. The motion was overruled, and the disposition of the cotton, sold under the Conuscation act of 1863, sustained by the Court.—New

General Sherman and Secretary Chase at Dartmouth College,

HANOVER, N. H., July 18.—The corner-stone of the new Gymnasium building at Dartmouth College, endowed by William H. Bissell, of New York, was laid this afternoon in presence of a large concourse of people, who were addressed by Senator Patterson, newly elected United States Senator from New Hampshire. Onief Justice Chase was prevented from attending by indisposition. He is in town, as also General Sherman, and a multitude of people attracted by the distinguished visitors. The Commencement exercises take place to-morrow.

GENERAL GRANT'S LATE ORDER.—Brevet Major Paul R. Hambrick has been appointed Post Commander of Alexandria and vicinity, for the pur-pose of enforcing General Order No. 44, relating to the arrest and continement of persons charged with offenses against officers, agents, citizens, and inhabitants of the United States, irrespective of color, in cases where the civil authorities have failed to make such arrests, or are unable to do so .- Arexandria Journal.

OIL STRIKE IN OHIO .- On the 4th of July oil was struck in the town of Salineville, Ohio, in a well sunk by a company of citizens of the town at a depth of 587 feet. The Cleveland Herald says the oil is of the very best quality, and the strike has produced great excitement in that vicinity. The well is now being tubed, when the value of the "strike" will be mani-

-Professor Andrew D. White, of Syracuse, is the Phi Beta Kappa orator, and Hon, Gideon H. Hollister, of Litchfield, the poet for the coming Commencement at Yale.

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