

they are sent here for temporary use, and liable to be withdrawn for use elsewhere, at the will of the home management.

3rd. That the funds used here are not a part of the capital of the parent bank, but are part of its surplus funds made up in part, at least, of the profits of this agency or branch.

4th. That most of the funds used by this branch are not employed in the business of banking, as defined in section 3407, Rev. Stat.

The assistant manager of this branch or agency, who was called as a witness on the trial, explained the course of business by saying, "when we see a chance to loan money here to good advantage, we notify the home office at Montreal, and they send it to us if they have it;" and his testimony shows that the average amount of money used for the first five months after this branch was established was over \$400,000 per month; that for the next twelve months it was over \$900,000 per month, and from the time the agency was established there was a steady increase in the business, so that the amount of money employed in the business for the twelve months ending the 31st of May, 1879, averaged \$1,496,635 per month.

It will thus be seen that a large sum of money belonging to the parent bank was constantly employed in its business here; whether the profits made in the business here were retained and used here, or whether those profits were remitted to Montreal as fast as made, and the money to be used here was sent from Montreal as wanted, does not seem to me to be material.

Section 3407 defines a bank and banker as follows: Section 3407.—"Every incorporated or other bank, and every person, firm or company, having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker."

Certainly the business carried on by the defendant here must be held to be a banking

business within this definition. It had a "place of business" where credits were opened by the deposit of money subject to be paid or remitted upon draft, check or order, and where bills of exchange were issued and sold. The last clause of the 3rd paragraph of Sec. 3408 reads as follows:—

"In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it."

It is contended that the defendant is a bank with branches within the meaning of this provision, and that only the sum of \$100,000 capital was allotted to this branch by the parent bank.

At the time the internal revenue system was adopted, in 1861, there were no national or United States banks, but in several of the States there existed what were called State banks, with power to establish branches. As I now recall the facts from memory such banks existed in Ohio, Indiana, Missouri, and Iowa, and in the charters of these State banks there was a provision for establishing branches and allotting or determining the amount of the capital of such branches, and I am of opinion that this provision as to the taxation of branch banks had special reference to the then existing State banks and their branches, although the language used is comprehensive enough to apply to any future institutions of the same character, whether State or national.

The evident meaning and intent of the whole section 3408 was to assume that the active money employed by an incorporated bank was represented by its capital, and that the capital of a branch bank was the amount which was allotted to it, or which it was permitted to use; and the branch for the purpose of this tax on capital was deemed a separate entity.

Ordinarily what is known as the capital of a bank is the fund paid in by its shareholders on their capital stock, and this forms the basis upon which the business of the bank is conducted. The banks loan this money or use it in the discount of commercial paper in the purchase and sale of ex-