The defendant filed an opposition à fin d'annuler based on the error in the number.

The COURT held the notices to be irregular, but rejected that part of the opposition which asked that the sale be annulled; each party to pay his own costs.

G. A. Morrison for the plaintiff.

N. Durand for the opposant.

U. S. CIRCUIT COURT, N. D. ILL.

UNITED STATES v. BANK OF MONTREAL.

Liability of Bank of Montreal to pay Internal Revenue Tax—Power to establish branch—Intention of Congress as to Banks of Foreign Countries.

1. As the Bank of Montreal can have no corporate existence here, but only transacts business by comity, its Chicago agency must, for the purposes of the internal revenue law, be considered the same as a private person engaged in the banking business, and pay the tax upon the amount of money it employs in its business, without regard to whether it is technically capital, that is, the fund contributed by its stockholders or not.

2. The power of the bank to establish a branch in Chicago, considered.

3. It could not have been the intention of Congress to allow banks of foreign countries to send their money here to be loaned and used by an agent for the profit and benefit of such banks, without subjecting them to the same burdens imposed by the law on domestic banks and bankers. — (Chicago Legal News.)

BLODGETT, J.—This is a suit to recover internal revenue taxes claimed to be due from defendant on the capital employed by defendant in the business of banking, from the 1st of Nov., 1871, to the 1st of December, 1879.

The defendant is a corporation created and existing under the laws of the Dominion of Canada, having its principal place of business in the city of Montreal. Its chartered capital is $12,000,000 fully paid up, and it has a reserve fund of $5,000,000, and average deposits of about $17,000,000.

On the first of November, 1871, it established a branch, or agency, in the city of Chicago, which has been continued to the present time. At the time this branch or agency was established here, its manager was informed that the sum of $100,000 had been assigned to his agency as capital.

The business here has been the receiving of deposits, to be paid out on draft or check of the depositors, buying and selling of domestic and foreign exchange and the loaning of money on warehouse receipts for grain and provisions as collateral security, the deposits averaging about $2,000,000, and the profits on the business transacted here amounting to about $10,000,000.

The $100,000 assigned as capital has been treated and known upon the books of the agency as "fixed capital," and the internal revenue regularly paid thereon.

In June, 1881, an examination was had by F. J. Kinney, agent of the Internal Revenue Bureau, of the books and accounts of the agency, from which it was ascertained that a much larger amount of money had been used in the business of this agency than the $100,000 capital allotted to it, and he reported the amount due for tax on capital, under the second paragraph of section 3408, of the Revised Statutes, which imposes a tax of one twenty-fourth of one per cent per month upon the capital employed in banking, to be $83,773.56 ; after this report was received, an assessment was made and warrant issued for the collection of the portion of said tax which had accrued within two years, amounting to $24,543.88, and the amount of this assessment was paid under protest. This suit is now brought to recover the balance of $59,229.68 of the tax so ascertained to be due, or reported to be due by examiner Kinney, and which it is claimed accrued between the establishment of the bank December 1st, 1871, and December 1st, 1879. Several defences to the right to recover this money are interposed :

1st. That this Chicago agency is a branch of the parent bank in Montreal, and as such only liable to pay internal revenue taxes on the capital allotted to it by the parent bank, under the last clause of the third paragraph of Sec. 3408.

2nd. That the funds used and loaned here cannot be considered capital of this bank, as