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90 Md. 416, 45 A. 210

Court of Appeals of Maryland.
 MONTICELLO DISTILLING CO

v.

MAYOR, ETC., OF CITY OF BALTIMORE.

Jan. 10, 1900.

Appeal from Baltimore city court; J. Upshur
 Dennis, Judge.

Action by the mayor and city council of Baltimore
 against the Monticello Distilling Company to
 recover liquor taxes. From a judgment for plaintiff
 in the city court of Baltimore, defendant appeals.
 Reversed.

West Headnotes

Taxation 371 ↪ **2101**

[371k2101 Most Cited Cases](#)

(Formerly 371k37.1)

Statute requiring persons having custody of
 distilled spirits to report them to state tax
 commissioner and making latter's valuation final
 was unconstitutional. Acts 1892, c. 704.

Constitutional Law 92 ↪ **284(1)**

[92k284\(1\) Most Cited Cases](#)

Acts 1892, c. 704, requiring persons having
 custody of distilled spirits to report the same to
 the state tax commissioner, and making the latter's
 valuation final, on which taxes shall be levied, is
 subject to the constitutional objection that
 authorizes the taking of property without due
 process of law, since there is no provision for an
 appeal from the tax commissioner's ex parte
 valuation of the property.

Appeal and Error 30 ↪ **1169(1)**

[30k1169\(1\) Most Cited Cases](#)

Where a case is tried on agreed facts, and no
 stipulation is made authorizing judgment for
 either party, and the only error assigned was the
 refusal of instructions, which were properly

refused, yet, where an affirmance would result in
 a judgment based on an unconstitutional statute,
 the case will be reversed, though there is no error
 in the rulings excepted to.

Taxation 371 ↪ **2150**

[371k2150 Most Cited Cases](#)

(Formerly 371k47(1))

Acts 1892, c. 704, § 2 , providing that distillers
 and warehousemen shall pay taxes on distilled
 spirits according to the valuation of the spirits in
 their custody on January 1st of each year, and
 prohibiting taxation of the same spirits twice in
 any one year, and sections 4 and 5 , requiring the
 taxes to be paid quarterly on spirits removed from
 their custody during the quarter, do not impose
 double taxation, as the object of sections 4 and 5
 is merely to subject to taxation such spirits as
 might be stored and removed currently during the
 year, and thus escape taxation.

Taxation 371 ↪ **2166**

[371k2166 Most Cited Cases](#)

(Formerly 371k57)

Acts 1892, c. 704, requires the valuation and
 assessment of distilled spirits for state and county
 taxation, and requires every distiller or proprietor
 of a warehouse in which such spirits are kept, and
 every person having custody of spirits, to report
 the same to the state tax commissioner, and that
 the same shall be taxed against the person having
 custody thereof, who shall pay the tax, and, if he
 is not the owner, he is given a lien on the same for
 taxes so paid. Held that, though it would appear
 from the inexact phraseology of the act that the
 tax was on the property, and not against its
 owners, the law must nevertheless be construed in
 conformity with Declaration of Rights, art. 15,
 declaring that every person holding property in
 the state ought to contribute to public taxes
 according to his actual worth, etc., and hence the
 tax will be construed as against the persons, and
 not the property.

Taxation 371 ↪ **2194**

[371k2194 Most Cited Cases](#)

(Formerly 371k86)

Acts 1892, c. 704 , providing that every distiller or proprietor of a warehouse in which distilled spirits are stored, and every person having custody of such spirits, shall pay taxes thereon, and section 8, providing that when he is not the owner he shall have a lien thereon for taxes so paid by him, are reasonable and valid regulations, since they merely make the custodians of liquor the state's agent in collecting the tax.

Taxation 371 ↻2643

[371k2643 Most Cited Cases](#)

(Formerly 371k454)

Laws 1898, c. 275, § 192a , authorizing an appeal to the board of county commissioners from the acts of assessors or agents appointed by them, does not authorize an appeal from the valuation of distilled spirits in the city of Baltimore by the state tax commissioner, under Acts 1892, c. 704, required to be returned to the appeal tax court of such city, since such section is confined to county commissioners, and has no application to the appeal tax court of Baltimore.

Taxation 371 ↻2643

[371k2643 Most Cited Cases](#)

(Formerly 371k454)

Since Act 1892, c. 704 , providing for the assessment and taxation of distilled spirits, makes the assessment by the county commissioner final, Code Pub.Gen.Laws, art. 81, § 14, authorizing appeals from valuations to the appeal tax court, does not authorize appeals from valuations of distilled spirits by the state tax commissioner.

Taxation 371 ↻2643

[371k2643 Most Cited Cases](#)

(Formerly 371k454)

Code Pub.Gen.Laws art. 81, § 144 , providing for the valuation of corporate stock for taxation, and requiring notice of valuation by the comptroller to the officers of the company assessed, and authorizing appeal, has no application to the

valuation of distilled spirits by the state tax commissioner under Acts 1892, c. 704, and does not authorize an appeal from his assessment.

Taxation 371 ↻2643

[371k2643 Most Cited Cases](#)

(Formerly 371k454)

Acts 1896, c. 322, authorizing appeal from the Baltimore appeal tax court in cases of assessments made by such court, does not authorize appeals from assessments of distilled spirits made by the state tax commissioner under Acts 1892, c. 704, since no appeal is allowed from the valuation of the state tax commissioner to the appeal tax court, which has no power to assess distilled spirits.

Taxation 371 ↻2656

[371k2656 Most Cited Cases](#)

(Formerly 371k467)

Code Pub.Gen.Laws, art. 81, §§ 10 , 14 , allowing the county commissioners and the appeal tax court, on giving notice to assess property that is assessable and discovered to have been unassessed, where discoveries of such unassessed property are made by collectors, county commissioners, or the appeal tax court from the returns of clerks, registers of wills, or assessors, do not apply to distilled spirits, since by Act 1892, c. 704, such spirits are made assessable exclusively by the state tax commissioner, and the power to assess unassessed property is not a power to review or revise the valuation placed by the proper officer on the property.


Taxation 371 ↻2670

[371k2670 Most Cited Cases](#)

(Formerly 371k482(1))

Since Code Pub.Gen.Laws art. 81, § 145 , requiring the appeal tax court and county commissioners to give notice of hearing of proposed increases of the valuation on property previously assessed, etc., applies only to such property as the court and county commissioners have the right to assess, such section does not apply to assessments of distilled spirits, taxed


under Act 1892, c. 704, the assessment of which by the state tax commissioner is final.

Taxation 371  **3695**

[371k3695 Most Cited Cases](#)

(Formerly 371k495)

Acts 1892, c. 704, declaring that the state commissioner shall fix the taxable valuation of distilled spirits and return the same to Baltimore appeal tax court, and that such spirits shall be taxed on the valuation and return so made, is not affected by Baltimore City Ordinances, art. 50, §§ 1, 5, 20, prescribing the duties of such court, and hence does not authorize the court to hear appeals from the valuation of the tax commissioner.

Taxation 371  **2776**

[371k2776 Most Cited Cases](#)

(Formerly 371k537)

Taxes paid on distilled spirits assessed under Acts 1892, c. 704, cannot be recovered, notwithstanding such act is unconstitutional.

Argued before MCSHERRY, C. J., and PAGE, PEARCE, FOWLER, BOYD, BRISCOE, and SCHMUCKER, JJ.

D. K. Este Fisher and William A. Fisher, for appellant. John E. Semmes, Leon E. Greenbaum, and John V. L. Findlay, for appellee.

MCSHERRY, C. J.

By Act 1892, c. 704, the general assembly directed all distilled spirits in this state to be valued and assessed for purposes of state and county taxation. The method prescribed for ascertaining and fixing that valuation differs from the ordinary mode pursued in relation to other tangible personal property. The act requires every distiller and every owner or proprietor of a bonded or other warehouse in which distilled spirits are stored, and every person or corporation having custody of such spirits, to make report to the state tax commissioner on the 1st day of January in each and every year of all the distilled

spirits on hand at such date. The tax commissioner, upon receiving such report, is authorized to fix the value of the spirits for the purposes of taxation; and it is made his duty to transmit, without delay, a copy of that valuation to the appeal tax court of Baltimore city if the distillery be located in the city, or the county commissioners of the county in which the distillery may be situated; and “upon the valuation and return so made the mayor and city council of Baltimore and the county commissioners respectively” are “directed and required, in making their annual levies,” to impose the state and the city or the county tax. If the spirits are owned by other persons than the distiller or the warehouseman, he is still required to pay the tax thereon; but by the eighth section of the act he is given a lien on the spirits covered by the tax which he may pay for the person to whom the spirits belong. It is provided by section 4 that the distiller and warehouseman shall make quarterly reports to the tax commissioner, showing all deliveries of distilled spirits from his custody and care, and he is required to pay to the proper officer the state and city or county tax on the spirits so delivered, though by the proviso to section 2 it is declared that “the same distilled spirits shall not be taxed twice for the same year.” The appellant is a New Jersey corporation, whose distillery is located in Baltimore. Upon the returns made by it the state tax commissioner valued the distilled spirits in its possession at eight dollars per barrel, and upon that valuation the taxes for the recovery of which this suit was brought were levied against the company. Of the large number of barrels of spirits included in the returns comparatively few belonged to the company. By far the larger portion were owned by persons who were unknown to the company. The evidence of these persons' ownership were certificates issued by the company. These warehouse certificates pass by delivery, and, after they leave the possession of the warehouseman or the distiller, he can with difficulty, if he can at all, keep trace

of them. The taxes levied by the mayor and city council of Baltimore on the valuation made by the state tax commissioner were not paid by the appellant. This suit was then instituted to recover them, and the distillery company resisted payment upon several grounds. The case was tried before the judge of the city court without the aid of a jury, and resulted in a judgment against the company for the amount of the taxes claimed by the city. From that judgment this appeal was taken.

It is insisted on the part of the appellant that the whole scheme of the act of 1892 is vicious. The act is assailed because it lays a tax upon property, and not upon the owner of the property; because, further, it compels a person, and a corporation not owning the spirits, to pay the tax due by the unknown owner of them; and, finally, because, in failing to make provision for the distiller or warehouseman to be heard, either before a valuation is fixed upon the spirits by the tax commissioner or after such valuation but before the imposition and collection of the tax, the act deprives the party charged with the tax of that due process of law without which, in some form, no valid judgment can be rendered by any tribunal at all. While there is a good deal of loose and inexact phraseology employed in many of the tax laws, it is not to be construed critically with a view to defeat the enactments, but it must be interpreted liberally, so as to uphold them. This act of 1892 was not very artificially drawn, but its meaning and purpose are sufficiently manifest. Its title declares that it is an act to provide for a tax on distilled spirits. Taxes of the kind here dealt with are, under article 15 of our declaration of rights, levied, not on things, but on the owners of things; and the value of the things owned fixes the measure of the owner's liability to contribute in taxes towards the support of the government. This is an axiom of political economy no less than a fundamental provision of our organic law. [Appeal Tax Court v. Patterson, 50 Md. 366; United States](#)

[Electric Power & Light Co. v. State, 79 Md. 63, 28 Atl. 768.](#) It cannot, therefore, be assumed that the legislature deliberately intended to disregard this principle, and to place the tax on the spirits, and *212 not on the owners of them. "Every person in the state," says the fifteenth article of the declaration of rights, "or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real and personal property." It is the individual, then, who is in the state, or who holds property therein, that is liable to taxation. He may be out of the state,-he may be a nonresident,-but, if he has property situated here, he is as much bound to contribute to the support of the government, according to the value of that property, as though he were permanently domiciled within the limits of the commonwealth. Whatever the language of the statute may be, it must bend to this paramount law, and it must be read as in harmony with it. The purpose of the act obviously was to raise a revenue from the owners of a class of property which, up to the time of the adoption of the statute now before us, had not been reckoned in the assessments upon its owners; and the peculiar nature of the property itself, the known difficulty in tracing its ownership, and the ease and facility with which the title to it was transferable, were all vital elements to be considered in devising a scheme for subjecting the persons who owned, had possession of, or controlled these distilled spirits to the obligation of contributing their just share of the public burden. Though the language employed, like that used in many of the other assessment laws, if read literally, would indicate an intention to impose the tax on the property, and not on the owner of it, that is not its meaning when considered in connection with the settled policy of Maryland as announced in the declaration of rights. We hold, then, that the tax is upon the owner of the spirits, and not specifically on the spirits.

As the distiller or the warehouseman is the individual through and from whom the title passes to others by means of certificates which he, and he alone, issues, it is no hard ship to require him to pay the tax upon all spirits in his possession, reserving to him a lien for his advances; nor is it an unreasonable or an unlawful legislative requirement. It is no hardship, because it is always in the distiller's or the warehouseman's power to immediately reimburse himself the taxes advanced for the unknown owner, and he may do this by selling enough of that owner's spirits for the purpose. The statute gives him that right, and the purchaser of the warehouse certificate is chargeable with knowledge of what the statute provides. The distiller or the warehouseman may enforce his lien as soon as he pays the tax due by the owner, and he is under no obligation or necessity to delay longer than his own wishes or convenience may suggest or dictate. The requirement that the distiller shall pay the tax for the owner is neither unreasonable nor unlawful, because it simply makes him the agent of the state to collect for the state, precisely as a corporation is made an agent to collect from its stockholders the tax due by them on the stock which they hold. The legislation of 1892 with respect to distilled spirits is, in this particular, identical with the provisions of the Code relating to the tax on shares of stock; and these latter have been upheld by this court as valid enactments. [Casualty Ins. Co.'s Case, 82 Md. 564, 34 Atl. 778](#); [American Coal Co. v. Allegany Co. Com'rs, 59 Md. 197](#). Nor is there a double tax imposed by the act. It was contended that a double tax was imposed, because by section 2 the distiller is required to pay a tax measured by the value of all spirits in store on January 1st, and he is also obliged by sections 4 and 5 to pay quarterly a tax upon the value of all spirits removed from the warehouse during the preceding three months. But as it might readily occur that spirits would be placed in bond after the report of January had been made, and would be removed before the following January, they

would, if this did happen, escape valuation, and the owner of them would escape taxation. To prevent this, the provisions of sections 4 and 5 were drafted, and, when those sections are read in connection with the proviso of section 2, which prohibits a collection of the tax twice in the same year, it becomes quite apparent that sections 4 and 5 have relation only to spirits placed in bond after the date of the January report, and which, therefore, are not included in that report.

We now come to the remaining question, which does not seem to have been presented to the court below, as the learned and careful judge who decided the case makes no allusion to that question in his admirable and lucid opinion. The question is this: Does the act of 1892 deprive the owner of distilled spirits of due process of law by reason of its failure to provide him a hearing of some sort as to the valuation of his property for the purposes of taxation? Personal notice is not necessary. It is sufficient if notice be given by a law designating the time and place where parties may contest the justice of the valuation. But notice and an opportunity to be heard are essential to the validity of every assessment. "The legislature can no more arbitrarily impose an assessment for which property may be taken and sold than it can render a judgment against a person without a hearing. It is a rule founded on the first principles of natural justice, older than written constitutions, that a citizen shall not be deprived of his life, liberty, or property without an opportunity to be heard in defense of his rights; and the constitutional provision that no person shall be deprived of these without due process of law has its foundation in this rule." [Stuart v. Palmer, 74 N. Y. 183](#); [Ulman v. Mayor, etc., 72 Md. 593, 20 Atl. 141](#), and [21 Atl. 709, 11 L. R. A. 224](#). This fundamental and inflexible principle underlies not only all judicial, but all executive and administrative,***213** proceedings which may deprive a citizen of life, liberty, or property; and consequently it is applicable in its full force to the

method by which each individual's property is valued to fix the basis of his liability for the payment of taxes. [Allegany Co. Com'rs v. Union Min. Co.](#), 61 Md. 545; [Commissioners v. Winand](#), 77 Md. 522, 26 Atl. 1110; [Myers v. Commissioners](#), 83 Md. 385, 35 Atl. 144, 34 L. R. A. 309; [Railway Co. v. Backus](#), 154 U. S. 421, 14 Sup. Ct. 1114, 38 L. Ed. 1031; [Merchants' & Manufacturers' Nat. Bank v. Pennsylvania](#), 167 U. S. 461, 17 Sup. Ct. 829, 42 L. Ed. 236, and cases therein cited. This doctrine was not questioned by the learned counsel for the city, but he insisted that there were other provisions of law which could be invoked to rescue the act of 1892 from condemnation on the ground we are now considering. Let us see whether this is so. Confessedly, the act of 1892 itself contains no provision by or under which the distiller, the warehouseman, or the owner may be heard by the state tax commissioner on the question as to what value shall be placed on the distilled spirits in bond. It does not authorize the tax commissioner to accord a hearing at all, and in this particular vitally differs from the Pennsylvania statute under review in [Merchants' & Manufacturers' Nat. Bank v. Pennsylvania](#), supra. The presentation to the tax commissioner "by the corporation of a statement of its property, and of its value, which it is required to furnish, is not the equivalent of a notice of the assessment made and an opportunity to be heard thereon." [Railroad Tax Cases \(C. C.\)](#) 13 Fed. 750. Nor does the act of 1892 give an appeal to any other tribunal from the valuation fixed by the tax commissioner. His ex parte decision is final. Sections 10 and 14, art. 81, Code Pub. Gen. Laws, and sections 1, 5, and 20, art. 50, Baltimore City Code of Ordinances, are relied on to supply what the act of 1892 omits in this respect. The above-cited sections of the Baltimore City Code of Ordinances merely prescribe the duties of the appeal tax court, and do not, as they could not (being merely ordinances of the municipality) qualify the explicit language of the act of 1892. The explicit language which they

cannot qualify is that all distilled spirits "shall be subject to municipal and county taxation" "upon the valuation and return so made," by the state tax commissioners of the counties, and the mayor and city council of Baltimore "are directed and required" to impose the tax "upon the spirits so returned and valued by the state tax commissioner." Thus the valuation fixed by him is declared by the legislature to be the valuation upon which both the city and state taxes are to be levied. Obviously, no mere ordinance of the city could modify or alter such a legislative direction and requirement, or give to the appeal tax court authority to change the valuation made by the state tax commissioner. If the appeal tax court cannot, in the teeth of the act of assembly, make, under the ordinances, a change in the valuation fixed by the state tax commissioner, a hearing before the appeal tax court would be a hearing after judgment, without power in the tribunal granting the hearing to give relief against the judgment rendered without a hearing. So the ordinances must be laid aside, because, no matter what their provisions may be, they cannot control the plain language of the statute.

But do the sections of the Code apply? Section 10, art. 81, relates to the county commissioners and the appeal tax court; section 14 to the appeal tax court only. Section 10 professedly deals alone with cases "where discoveries of assessable property are made by collectors, county commissioners, or the appeal tax court" from designated sources, and those sources are the returns of clerks, registers of wills, or assessors, "or in any other way." In these instances-that is, when discoveries of assessable property are made by collectors, county commissioners, the appeal tax court, or in any other way-it becomes the duty of the county commissioners and the appeal tax court to assess such discovered property. The meaning of this section obviously is that these tribunals shall have power to assess property that has not been assessed, and that ought to be

assessed; but, as distilled spirits are required to be assessed by the tax commissioner, and are, in fact, assessed by him before any return is made to the appeal tax court, they cannot be classed as discovered unassessed property, or as property which the appeal tax court is given power to assess. The power to assess unassessed property is not a power to review and revise the valuation placed by some one else on that same property. The statute confers on the state tax commissioner an exclusive authority to value and assess this special class of property. A general power given to the appeal tax court to assess unassessed property can, by no fair construction, include the right to readjust a valuation made by another officer, when the valuation made by him is declared by law to be the one upon which the tax must be levied. Section 14, art. 81, of the Code requires the appeal tax court to meet from time to time for the purpose of hearing appeals, making transfers, etc. But it is self-evident the appeal tax court can only hear such appeals as the law provides shall be heard by it. If no appeal to it be given in a particular case, no appeal lies. It is a statutory tribunal, with limited and defined powers, and, of course, it can only hear such appeals as the law permits to be taken to it. Section 145, art. 81, of the Code requires the appeal tax court and the county commissioners to give notice to the owner before they proceed to increase the valuation upon his previously assessed property, and before they undertake to add any new property not valued and returned by the proper assessor or collector. This section has relation only to property which the appeal tax court or the county *214 commissioners have the right to assess, and does not apply, as the proviso at the end of it shows, to property "assessed and returned *** by the proper collector or assessor whose duty it is to assess and return the same." Nor does section 192a, c. 275, Laws 1898, which declares that there shall always be an appeal to the board of county commissioners from the acts of all assessors or agents appointed by them, "or

others authorized to act as assessors under the laws of this state," apply, because, whatever its scope, it in explicit terms is confined to the county commissioners, and has no relation to the appeal tax court of Baltimore city. There is, as this outline of the statutes indicates, no provision of law fixing a definite time for the state tax commissioner to make his valuation under the act of 1892, or designating a time for him to hear complaints, as in [Hagar v. Reclamation Dist., 111 U. S. 710, 4 Sup. Ct. 663, 28 L. Ed. 569](#); nor is there any enactment giving the individual assessed an appeal from that assessment to some other tribunal. Under section 144, art. 81, of the Code, which makes provision for the valuation by the state tax commissioner of the shares of the capital stock of banks and other corporations, it is the duty of the state tax commissioner, after he has fixed the valuation in the way pointed out in section 141, as amended by Act 1896, c. 120, to certify the same to the comptroller, who is directed at once to notify the president or other proper officer of the company of the valuation, and, if no appeal be taken within 30 days, the valuation must stand. But any corporation may appeal from the valuation to the comptroller and treasurer, and may then contest the assessment made by the state tax commissioner. This section does not in terms, or by necessary, or even remote, implication, include the case before us. To bring the valuation fixed by the state tax commissioner on distilled spirits (that is to say, to bring his action in execution of the law of 1892) within the operation of section 144, we should have by construction (and a very strained construction) to write into that section words which are not there now, and thus make it embrace a case not thought of at the time of its adoption, in 1878, or 14 years before the duty to assess distilled spirits was placed upon the tax commissioner.

Nor is Act 1896, c. 322, applicable. That act gives an appeal from the appeal tax court to the

Baltimore city court, and from the latter to the court of appeals, in certain cases of assessments made by the appeal tax court, and of failures on its part to reduce existing assessments. But, as the appeal tax court has no jurisdiction to make assessments of distilled spirits, or to review the valuation of the state tax commissioner in any instance, no appeal from it could possibly bring before the Baltimore city court or to this court any decision made by the state tax commissioner as to the value which ought to be placed on distilled spirits for taxable purposes. The difficulty with the act of 1892 is that it nowhere provides for a hearing before any tribunal or official on the question of valuation, and that there is no other enactment which gives to the appeal tax court, or to any other court or board, a right to hear that question on appeal from the state tax commissioner. Act 1896, c. 322, permits an appeal from the appeal tax court, but there is no appeal from the state tax commissioner to the appeal tax court to get his decision before it.

As there is no provision of law giving the distiller, the warehouseman, or the owner of the spirits the right to be heard, either before the tax commissioner, or before any other tribunal on appeal from him, in respect to the valuation to be placed on the property for the purposes of taxation, it follows, according to all the authorities, that the tax sued for in this action cannot be recovered. The act of 1892 is defective in failing to make provision for a hearing or for an opportunity to be heard, but in other respects it is free from constitutional objections. This defect is not cured by any other statute, but it can be easily remedied by amendment. As the general assembly is now in session, there need be no delay in adopting the proper provision. If the terms of section 144 were enlarged so as to permit an appeal from the tax commissioner's valuation on distilled spirits to the comptroller and treasurer, in the same way that the section now provides for an appeal from valuations on the capital stock of

banks and other corporations; or if the statute should be amended so as to afford the parties affected an opportunity to appear at a designated time before the tax commissioner, and then and there contest the valuation, the whole difficulty and the constitutional imperfection would be removed.

We ought to add that nothing we have said is to be taken as holding that taxes actually paid under the act of 1892 can be reclaimed. A taxpayer may waive his right to be heard, and, if he voluntarily pays a tax which the legislature had the power to impose, but which, because of defects in the statute, could not have been collected by legal process, he cannot be allowed to complain that he had no notice of the assessment, or had no opportunity to contest it. Should the legislature fail to amend the act of 1892 in the way we have indicated, or in some other equally effective manner, taxes hereafter levied on distilled spirits cannot be collected if the collection of them be resisted by the persons who are charged with their payment.

The case, as it stands on the record, presents something of a dilemma. It was tried on agreed facts, though not on a formal agreed statement of facts, and the agreement contains no stipulation authorizing a judgment to be entered for either party. There were two prayers offered by the defendant. Neither one of them touches the constitutional question which we have just discussed. Both prayers were rejected, and were properly rejected,*215 because they rested the defense upon the untenable grounds considered and disposed of in the first part of this opinion. Now, if we affirm the judgment because there was no error in refusing to grant the prayers, we affirm a judgment founded on an unconstitutional statute; if we reverse it, we reverse though there is no error in the rulings excepted to. But, as we cannot affirm without overruling the constitutional objection, which we hold to be well

taken, we must, as the only resort, reverse; and, as no recovery can be had in the face of that objection, a new trial will not be awarded. Judgment reversed, with costs above and below, without awarding a new trial.

Md. 1900.

Monticello Distilling Co. v. City of Baltimore

90 Md. 416, 45 A. 210

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