APPEAL TAX COURT
OF BALTIMORE CITY

vs.

ELIZABETH PATTERSON

IN THE

COURT OF APPEALS

OF MARYLAND.

OCTOBER TERM, 1878.

SPECIAL DOCKET No. 48.

BRIEF ON THE PART OF THE APPELLANT.

The appellee in this case asserted by her petition, supported by affidavit, that she was not the owner of the private securities, to the value of ten thousand dollars, which were valued to her. These securities were, therefore, properly directed to be stricken from the list of property valued to the appellee.

The remaining securities valued to her will be brought most satisfactorily to the attention of the Court by the following descriptive list :

City of New York 6 per cent. stock..... $105,000.

Of this amount $14,100 is expressed by certificates in the form No. 10, (agreement, record, page 6.) Form record, page 12 ; $37,500 are expressed by certificates in the form No. 11, (record, pages 12, 13) ; $2000 are expressed by certificates in

the form No. 12, (record, page 13) ; $26,000 are expressed by certificates in the form No. 13, (record, pages 13, 14) ; $500 is expressed by a certificate in the form No. 14, (record, page 14) ; $5,700 by certificates expressed in the form No. 15, (record, pages 14, 15) ; and $6500 by certificates in the form No. 16, (record, page 15.)

These amounts aggregate $90,500, leaving $14,500 of New York City stock, which have been redeemed since the assessment, and of which no descriptive certificate is produced.

The Court will perceive that none of these certificates express upon their face that the debts, which they evidence, are exempted from taxation under the laws of the State of New York. They are all simple evidences of indebtedness of the Mayor, Aldermen and Commonalty of the city of New York to the appellee, or her assigns.

City of New York 7 per cent. stock.....$15,000.

This amount is expressed by certificates in the form No. 9, (record, pages 11, 12.) This certificate does not express that the debt which it evidences is exempted from taxation under the laws of the State of New York.

County of New York stock, 7 per cent .....$10,000.

No form of certificate of this indebtedness is shown by the record.

County of New York stock, 6 per cent.....$50,000.

These certificates are expressed in the form No. 8, (record, page 11.) The certificate set forth does not express upon its face that the debt which it evidences is exempted from taxation under the laws of the State of New York.

State of New York 6 per cent. stock.....$30,000.

Of this amount $27,000 is disclaimed, and the $3000 really owned having been redeemed, no certificate is produced. (Record, pages 1 and 6.)

State of Pennsylvania 6 per cent. stock.....$50,000.

This amount is expressed in certificates in the form No. 1. (Record, pages 6 and 7.) Upon the face of the certificate it is stated that the debt, which it evidences, is exempted from State, municipal and local taxation in Pennsylvania.

State of Ohio 6 per cent. stock .....$86,000.

Of this amount (record, page 6) $76,000 is evidenced by certificates in the form No. 2, (record, page 7); and $10,000 by certificates in the form No. 3, (record, page 8.) These certificates do not express that the debts which they respectively evidence are exempted from taxation under the laws of the State of Ohio.

City of Philadelphia 6 per. cent stock .....$116,000.

$58,000 of this amount is expressed in certificates in the form No. 4, (record, page 9); $11,000 in the form No. 5, (record, pages 9 and 10); $4000 in the form No. 6, (record, page 10); and $43,000 in the form No. 7, (record, pages 10, 11.)

The certificate No. 4, just referred to, states upon its face that it is "six per cent. loan, payable free from all taxes." The certificates Nos. 5, 6 and 7 do not express that the debts, which they evidence, are in anywise exempted from taxation under the laws of the State of Pennsylvania.

The Court will perceive that the certificates set forth in the record, which the assessors, following the designation in the market, have called "stock" of certain States and cities, are, in fact, evidences of the indebtedness of such States and cities respectively to the appellee.

The appeal taken from the pro-forma ruling of Baltimore City Court, will make it necessary that this Court should determine whether this State has a right to direct that bonds, of the descriptions set forth in this record, shall, when owned by residents of this State, be valued and assessed to such owners for the purposes of State and municipal taxation.

The basis of our system of State taxation is the fundamental rule set forth in the fifteenth article of the Bill of Rights, prefixed to the Constitution of 1867. That rule is that every person in the State, 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.

The principle, which must be deduced from this article, is that immoveable properties within this State are subject to valuation and assessment in this State, whether such property be owned by residents or non-residents ; and that moveable properties, owned by residents of this State, follow the persons of their respective owners, and must be accounted part of the property by which the actual worth of such owners shall be measured.

This principle is a rule of Public Law. 2 Domat's Civil Law, by Strahan, 2 Ed. 330 ; Story on Conflict of Laws, 3d Ed., sections 379, 380, 381 ; Sill vs. Worswick, 1 H. Black, 690 ; Freke vs. Lord Carberry, 16 Eq. Cases, 466, Lord Selborne ; Newcomer vs. Orem, 2 Md. 305, 307, 310.

The words "moveable properties," used by the Continental writers, are now recognized as the fitting term by which to distinguish those properties which follow the person, and are, therefore, "*moveable*" from those properties, which, though treated by a local law as personal estate, are yet, as matter of fact, *immoveable*, because, being an interest in lands, "they savour of the realty." Freke vs. Lord Carberry, 16 Equity Cases, 466, 467 ; Newcomer vs. Orem, 2 Md. 305.

It certainly cannot be reasonably doubted that the properties, valued to the appellee, belong to the class of "moveable properties." The properties, thus valued, are State and municipal bonds, bearing interest. "States and cities when they borrow money and contract to repay it with interest, are not acting as sovereignties. They come down to the level of ordinary individuals. Their contracts have the same meaning as that of similar contracts between private persons." *Murray vs. Charleston,* 96 U. S. 445. See also *U. S. Bank vs. Planters' Bank,* 9. Wheat. 907. Their obligations are simply evidences of debt, due from such States and cities to the holders of such obligations. Such bonds are, undoubtedly, property in the hands of those who hold and own them. *State Tax on Foreign-held Bonds,* 15 Wallace, 320. If they are property in the hands of those who hold and own them, they have, as property, no other *situs* than the residence of such holders and owners. *State Tax on Foreign-held Bonds,* 15 Wallace, 323.

For this reason the first section of the Act of 1876, chap. 260, directed that such properties, when owned by a resident of this State, should be valued and assessed to such owner at the place of his residence. By the section referred to, all bonds, made by any corporation, or by any other State, and all investments in securities, or stocks of any other State, and all property of every kind, nature and description, within this State, belonging to a resident of this State, not exempted from taxation by the second section of the said Act, were made liable to valuation, assessment and taxation.

Nor was the provision thus made any new feature in our taxing system. The descriptions of property thus referred to were subjected to valuation and assessment in this State by the General Assessment Acts of March Session, 1841, chapter 23, section 1, and 1852, chapter 337, sections 1 and 9 ; by Article 81, section 2, of the Code of 1860 ; by the General Assessment Act of 1866, chapter 157, sections 1 and 9 ; by the Revenue Act of 1874, chapter 483, section 2, as well as by the General Assessment Act of 1876, chapter 260, sections 1 and 17.

The securities valued to the appellee showed the right of the appellee to demand payment of the interest on these securities as it accrued and became payable, and of the principal when it became due, according to the terms of the respective contracts. Williams on Personal Property, 4 Am. Ed. 4. These rights were properties belonging to the appellee. *State Tax on Foreign-held Bonds*, 15 Wallace, 320; *Murray vs. Charleston*, 96 U. S. 445. They were properties having a value in the market while the interest was maturing, and before the debts were due. They were properties, which, because they consisted of the right of the appellee to demand such interest and principal as they respectively became due, were personal to the appellee, and had, as such rights, no taxable *situs*, except her residence. Cooley on Taxation, 65; Burrough's on Taxation, sections 41, 134, 432; *Latrobe vs. Mayor and City Council of Baltimore*, 19 Md. 22; *Mayor and City Council of Baltimore vs. Sterling and Ridgely*, 29 Md. 49; *Champaign County Bank vs. Smith*, 7 Ohio, 52, 54; *Hall vs. County Commissioners of Middlesex*, 10 Allen, 102; *Webb vs. Burlington*, 28 Vt. 190; *Kirtland vs. Hotckiss*, 42 Conn., 426, 435. They were properties which the Act of 1876, chap. 260, section 1, directed to be valued to the appellee as the owner of such properties.

It did not matter that by the terms of the contracts the appellee was obliged to demand payment in a State other than that in which she resided. It did not matter that she was required, by the terms of the contracts, to assign these securities in a particular manner; or that the registry of such assignment was required to be made or kept in a particular place. Such conditions did not alter the situs of the right of property, or separate such properties from the person of the appellee. They were only precautions, intended for the greater safety of the debtor. *Black vs. Zacharie*, 3 Howard, 513; *Farmers' Bank of Maryland vs. Iglehart*, 6 Gill, 56; *Baltimore City Passenger R. R. Co. vs. Sewell*, 35 Md. 252, 253.

The bonds of which the appellee was possessed were, it is true, securities, which were of record as the property of the

appellee, in the proper offices of the States and corporations by which such bonds were executed to the appellee; but her title did not depend upon the register only. She had actual possession of the bonds. She was competent to sell, bequeath, or give them away as parts of her estate. They were not subject, in any wise, to the taxing jurisdiction of the States under whose authority they were issued, as the property of the appellee; because the appellee was not within the jurisdiction of those States. Murray vs. Charleston, 96 U. S., 445. They were taxable only under the laws of this State, because their owner resided in this State; and, being taxable only in this State, they were properly valued to the appellee as her property within this State, under the Act of 1876, chapter 260, section 2.

It is true that the Supreme Court, in the case of *State Tax on Foreign-held Bonds,* 15 Wallace, 323, 324, said: "that the actual situs of personal property, which has a visible and tangible existence, and not the domicil of its owner, will, in many cases, determine the State in which it may be taxed. The same thing is true of public securities, consisting of State bonds, and bonds of municipal bodies, and circulating notes of banking institutions; the former, by general usage, have acquired the character of, and are treated as, property *in the place where they are found,* though removed from the domicil of the owner; the latter are treated and pass as money wherever they are. But other personal property, consisting of bonds, mortgages, and debts generally, has no situs independent of the domicil of the owner."

We might content ourselves with conceding that such general usage would, in any State in which it was recognized, and in which a different rule had not been provided by the terms of express law, lead to the conclusion set forth by the Supreme Court. The usage referred to, however, never obtained, it is believed, in this State. If it ever did exist in this State, it was altered many years since, as we have seen, by express legislative enactments; and the change, thus made, has been steadily adhered to.

It is true, under the common law and civil law alike, that usage, where it exists, creates a local law; but the "unwritten law," thus established, may be changed in the manner by which other local laws may be altered, that is to say, by the terms of positive law. *Hammerton vs. Honey*, 24 Weekly Reporter, 603, 604; Jessel M. R.; *Walker vs. Transportation Co.*, 3 Wallace, 155; *Brown vs. Jackson*, 2 Wash. C. C. Rep. 25; *Foley & Woodside vs. Mason*, 6 Md. 49, 50; Appleman vs. Fisher, 34 Md. 553.

We are not obliged, however, to rest satisfied with the protection which the law of this State affords against the inference which may be drawn from the observations of the Supreme Court, in reference to State and municipal bonds, in the case of the *State Tax on Foreign-held Bonds*, to which we have referred. We confess, indeed, that we do not understand what is meant by the statement in the opinion referred to, that State bonds, and bonds of municipal bodies, by general usage, "have acquired the character of, and are treated as property in the place *where they are found*, though removed from the domicil of the owner."

We ask this Court, however, to observe that the Supreme Court does not say that such bonds are not to be treated as property, at the domicil of their owner, *when they are found at such domicil*. It certainly did not mean to say that they could be treated as property *only* in the State or municipality by which such bonds were issued; for while in *Murray vs. Charleston*, 96 U. S. 445, it decided that the promise of a State or municipality *was* property, it held on page 440, *that a non-resident holder of such State or municipal promises, was not a holder of property within such State or city*. If such non-resident holder of State or city bonds is not a holder of property in the State or city issuing such bonds, he must certainly be accounted the holder of such property at his domicil in the State in which he resides. And, as the Supreme Court, in its opinion in Murray vs. Charleston, on page 445, expressly

limits the taxing power of a State or City over debts due by such State or City, *to creditors within their respective jurisdictions*, it must certainly be understood to have meant that the taxing power of other States, and of municipalities in other States, extended to such properties, when owned by creditors residing within *their* respective jurisdictions. In such cases the property is found at the domicils of the owners of the particular properties.

We, therefore, respectfully submit, that the State and municipal bonds, which are shown by the record to have been valued to the appellee, were properly included in the lists of her assessable property

Finally, we submit to the Court, that, as a question of strict law, it is immaterial whether bonds, issued by another State, or by a municipality, incorporated by another State, and owned by a resident of this State, were or were not exempted from taxation by the State which authorized the issue of such bonds. Such exemption can have no extra-territorial operation, except by general usage, or by a comity, which has attained the force of general usage. The patient inquiry made in the preparation of this brief has satisfied the undersigned that there is no usage, or comity, having the force of usage, which will accord, under the Act of 1876, chapter 260, exemption from taxation in this State to bonds owned by residents of this State, which were exempted from taxation in another State by the law of such State, authorizing their issue.

There is, of course, no need of any argument to show that the bonds of other States, or of municipal or other corporations, incorporated by other States, are not exempted from taxation by this State, because such bonds are not taxed in other States, under their general laws when owned by residents of such other States. Each State is free, in the absence of a constitutional provision to the contrary, to exempt from taxation any class of property belonging to residents of such State to which it

may see proper to grant such immunity. The power thus exercised can never operate beyond the jurisdiction of the State exercising it. No State can protect from taxation property within the jurisdiction of another State, owned by a resident of such other State.

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OF MARYLAND.

OCTOBER TERM, 1878.

SPECIAL DOCKET, No. 48.

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BRIEF FOR APPELLEE.

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I.—THE CASE.

The appellee in this case returned to the assessors of the Eleventh Assessment District of Baltimore city, in accordance with the provisions of the Act of 1876, chap. 260, the following property:

City of New York Stock, 6 per cent.....	$105,100
City of New York Stock, 7 per cent.....	15,000
County of New York Stock, 7 per cent.....	10,000
State of New York Stock, 6 per cent.....	3,000
State of Pennsylvania Stock, 6 per cent.....	50,000
State of Ohio Stock, 6 per cent.....	86,000
City of Philadelphia Stock, 6 per cent.....	116,000

At the same time requiring the said assessors, in pursuance of section 18 of that Act, to note her claim that such property was exempted from taxation for reasons substantially the same as are set forth in the petition. The Board of Control and Review No. 3 of the city, not only disallowed the exemptions so

claimed, but added of their own motion to the appellee's list of property, $10,000 worth of "private securities," and $27,000 more of New York State 6 per cent. stock.

The appellee thereupon filed her petition in the Baltimore City Court, as provided for in section 28 of the Act in question, praying that all the property so assessed to her should be stricken from the books of assessment.

The appellants having answered this petition, the cause was, after several continuances, argued in the Court below, but, before the decision had been formally announced, the appellants' counsel consented to a *pro forma* order against them, and took the present appeal.

II.—The Pleadings.

The petition alleges the facts previously set forth, denies the ownership of any private securities or of more than $3,000 New York State 6 per cent. stock, and claims the exemption from taxation of all the stocks returned to the assessors by reason of their public character, and the facts that all of them, except $58,000 City of Philadelphia 6 per cent. stock, were exempted from taxation of every kind by the laws of the States of New York, Pennsylvania and Ohio, respectively authorizing their issue, while the above mentioned $58,000 had always been taxed by the State of Pennsylvania, and the tax paid to that State by the petitioner. By amendment it was made to further charge that all the stocks in question were of the character known as "registered;" i. e., capable of transfer only on the public record books of the States and municipalities issuing them, and through the doing of acts necessarily to be done beyond the limits of the State of Maryland, and which paid their interest only at the places provided by the laws of foreign States, and likewise beyond the boundaries of this State,

The answer admits the assessment of "the *property mentioned* in the said petition," and avers the ownership by the petitioner of the *said property mentioned*, &c., and that *the said property* was at the time of assessment and still is subject to taxation by the State.

It is respectfully submitted that this answer admits all the allegations of fact of the petition, except those relating to the

above mentioned $10,000 of "private securities," and $27,000 of New York State Stock, in other words that as to all the allegations in the petition relating to the foreign laws affecting the securities charged to be wrongfully assessed, its effect is that of a demurrer only. It is a general rule of judicial altercation that every pleading shall be construed *against* the party submitting it; i. e., that whatever facts he admits, or even does not deny, shall be considered as admitted in the sense most favorable to his antagonist.

Chitty on Pleading, Vol. I, p. 260.
Stephen on Pleading, p. 379*
Mitford's Chancery Pleadings, p. 48, Note III.
Mœner vs. Carroll, 46 Md., 193, pp. 215, 219.

Now the only "property mentioned" in the petition, with the exceptions above noted, is property affected with certain incidents conferred by the laws of other States, and materially different, both in value and legal characteristics, from similar property not so affected. The existence and effect of these foreign laws were, in the view of Courts of this State, matters of *fact* only.

Gardner vs. Lewis, 7 Gill, 377, p. 393.
Balto. & Ohio R. R. Co. vs. Glenn, 28 Md., 287, page 323.

Therefore in admitting that "the property mentioned" had been assessed as charged, this answer admits that *public registered* stock of the States and municipalities mentioned in the petition, *which is exempted from taxation of every kind by the laws of those States authorizing its issue,* has been so assessed.

Nor is this admission weakened by the fact that the appellee undertook, *ex maiore cautela,* to sustain certain of the allegations in her petition by the evidence contained in the record. The issues joined in this cause were, except with respect to the property added to the appellee's return by the Board of Control and Review, issues *of law* only, and the evidence produced was merely superfluous. Even if the evidence in the record *contradicted* any statements of this petition, those statements should

still be accepted as true by the Court; much more where there is a *failure of proof* as to a statement, is that statement to be received on the strength of the answer's admission. The materiality of this discussion and the injustice to the appellee of a different construction to the pleadings from the one herein contended for will be evident when we consider

III.—The Proof.

When the cause, after several postponements, was called for trial, the appellee's counsel learnt for the first time that their opponents did not construe the answer as admitting the allegations in the petition emphasized above. Unwilling to risk the construction which might be placed by this Court upon the question, and having no reason to apprehend any difficulty in producing the proof required, they undertook to sustain the petition by evidence, and submitted the appellee's affidavit, (record, p. 5) and certificates for most of the stock in question, (record, pp. 6–15.)

The appellants offered no evidence. Analyzing the evidence it is submitted that it establishes fully :

1. The petition's denial of ownership of the property added by the Board of Control and Review.

2. The registered character of all the stocks returned by the appellee, except $3,000 New York State 6 per cent Stock, and $14,000 New York City 6 per cent stock, which had been redeemed, and the certificates for them surrendered during the two years that the cause had been pending, (record, p. 6.)

3. The exemption from taxation by virtue of the laws of their issue of the $50,000 State of Pennsylvania 6 per cent. stock, (record, p. 7) and $58,000 of the City of Philadelphia 6 per cent. stock, (record, p. 9)

4. The taxation of the remaining $58,000 City of Philadelphia 6 per cent. stock as charged in the petition.

The foreign law as to the taxation or exemption therefrom of the State of Ohio, and all the New York State city and county stock, and the entire *status* of the $3,000 New York State, and $14,000 of the New York City 6 per cent. stock

remains unaffected by the evidence, except so far as proof may be offered by either party in this Court under the agreement on page 4 of the record, and is consequently determined by the pleadings.

IV.—The Questions before the Court.

It will not be disputed that the appellee is entitled to have so much of the order affirmed as relates to property added to her return by the Board of Control and Review, and this Court has to determine, therefore, only whether, *public registered* stock of sister States of the Union or of municipalities, constituting agencies of government of such States, which stock is either *exempted from or subjected to* taxation in such States by the laws authorizing its issue, can be taxed by the State of Maryland.

To avoid any cavil as to the facts, however, it may be as well to leave out of consideration in the first instance, the question of exemption under the foreign laws, and consider the general question.

V.—Is the registered public debt of one State owned by a non-resident, taxable by the State of the owner's residence?

A. Some preliminary considerations.

Whatever may be the rule in other States, the law is perfectly settled in Maryland, that the same property cannot be taxed twice by the same or a co-ordinate authority.

The Tax Cases, 12 G. & J., 117.
Gordon's Ex'rs. vs. The Mayor of Balto., 5 Gill, 231.
Mayor, &c. of Balto. vs. Balto. & O. R. R. Co., 6 Gill, 288.

Nor does it affect this position, (except to strengthen its equity) that the two authorities may be foreign to each other.

State of Mo. vs. St. Louis Co. Ct., 47 Mo., 594, page 600.
Railroad Co. vs. Jackson, 7 Wall. 262, p. 268.

Therefore the right of taxation by one State excludes that of another; i. e., if the State of Maryland can tax the stock of

other States held by her residents, she cannot tax her own stock held by non-residents. We extend basis of taxation in one way while we curtail it in another.

Moreover, the right of taxation depends upon the *situs* of the property, not that of its owner.

State vs. Phil., Wilm. and Balto. R. R. Co., 45 Md. 361, 377.

And the question of this *situs* is wholly free from the usual presumption against exemptions from taxation; for it is not whether the State has relinquished its power to tax property of this description, but whether it ever possessed such a power.

Since then property can have only one *situs* for taxation, we need only determine:

B. What is the *situs* for taxation of property of this description?

The general rule *mobilia sequuntur personam*, relied on by the appellants, is far from being of universal application and has been qualified by especially numerous exceptions in cases of taxation.

Hoyt vs. The Commrs. of Taxes, 23 N. Y., 224.
City of Albany vs. Meekin, 3 Ind., 481.
Catlin vs. Hull, 21 Vt., 152.
The People vs. The Home Ins. Co., 29 Cal., 533.
Faxton vs. McCosh, 12 Iowa, 527.
Wilkey vs. City of Pekin, 19 Ills., 160.
Jenkins vs. Charleston, 5 Rich., (N. S.) (S. C.) 393.

Indeed, being, after all only a legal fiction intended to promote justice, it yields whenever justice requires another rule to be adopted.

Kent's Comm., Vol. I, p. 406.
Story Conf. of Laws, Sec. 550.

If then we find that legal principle, (*a*) substantial equity, (*b*) reasonable analogy, (*c*) public policy, (*d*) comity, (*e*) or con-

stitutional obligations, (*f*) requires that this property should have a *situs* for this purpose different from the residence of its owner, the general rule will not stand in our way.

(*a.*) Taxation is an attribute of sovereignty; it extends to everything which exists by the State's authority or is introduced by its permission.

McCulloch vs. Maryland, 4 Wheat. 316.
Howell vs. The State, 3 Gill, 14.

But over nothing is a State more completely sovereign, nothing exists more evidently by its own authority or is introduced more completely by its own permission, than its own debt, and that of its municipal corporations. Nothing can be more entirely removed from the control of another State "upon the soundest principles" then such property is "exempt from taxation" by the foreign State.

Howell vs. The State, *supra.*

(*b.*) Taxation is the equivalent of protection; unless some return is made by the government for the property taken, exacting it "is none the less robbery because it is done under the forms of law, and called taxation."

Loan Association vs. Topeka, 20 Wall. 655.
Alexander & Wilson vs. M. & C. C. of Balto., 5 Gill, 383.
Moale vs. M. & C. C. of Balto., 5 Md., 314.

But what protection does or can one State of the Union afford to the interests of its citizens in the public debt of another State? Where is the equivalent for the burden? The value, the security, the very existence of the property depend upon the political well-being of the debtor State; there and there only can the expenditure of public money be called a benefit to the creditor.

(*c.*) By the Act of 1876, as well as the universally admitted principles of taxation, real property in a foreign State owned by a resident of Maryland, is not taxed here. Yet

only a purely arbitrary distinction can be drawn for the present purpose between a lot of ground in Pennsylvania and a share in the registered Pennsylvania State debt. Either may be owned by a non-resident; the evidence of ownership (the deed as well as the certificate) may in either case be in Maryland; in both cases any transfer of ownership must be made in Pennsylvania *and according to the forms of Pennsylvania law;* the interest no less than the rent is payable there, and there only; only by Pennsylvania could the house itself be seized for non-payment of taxes; but it would be equally possible for that State, and equally impossible for any other to levy under similar circumstances upon the stock. It was no doubt from the face of these analogies that the public debt of England was at one time held to be real property.

In re Ewin, 1 Cr. & Jer., 151, p. 155.

And although this rule has been changed for general purposes, it is submitted that reason and justice demand its application still for those of taxation.

(*d.*) As there can be only one *situs* for taxation,

State of Mo. vs. St. Louis Co. Ct., *supra*,

we have to consider whether the public interest will be the better promoted by taxing our public debt held by non-residents, or the interests of our residents in foreign public debts. The following considerations are submitted in behalf of the former construction:

1. It shuts the door to fraud and perjury. The ownership of the debt of each State can be determined by its fiscal officers from an inspection of public records always open to them; that of the debt of other States can be learned only from the returns of tax payers. To say nothing of the gain to public morality, the advantages to the treasury, in the narrowest sense, of a mode of collection dependant in nowise upon the consciences of contributories, would almost certainly be many times the amount of the most rigid tax on foreign investments.

2. It simplifies the whole method of collection. The stock, the thing taxed, can never be taken out of the State, and it can be levied upon and sold whenever the taxes are in arrears. If a resident of Maryland, on the other view, had *all* his property invested in the debts of other States, (a perfectly supposable contingency) it is hard to see how he could be *compelled* to pay any taxes at all.

3. It gives the public debt of each State a fixed value the same for all investors, and in each of the great financial centres of the country. This is of almost incalculable advantages both to States that wish to borrow from all the disposable capital of the country, and to capitalists who wish the largest choice of investments. The opposite construction would, in the last resort, confine the loans of each State to its own citizens.

4. Finally it gives the citizens of one State a direct interest in the good order and prosperity of sister States; tends to prevent provincial jealousies and sectional antagonisms; avoids the danger of reciprocally hostile legislation by each State against the credit of its neighbor, and promotes the "more perfect union" aimed at by the constitution.

(*e.*) In the letter of instructions of the Attorney General to the assessors, (May 29, 1876) the following language is used:

"Public securities consisting of State bonds and bonds of municipal bodies, which are, by the acts of such State authorizing their creation and issue, declared to be exempt from all taxation are, by usage and upon principles of comity, exempted from taxation by this State. If the law authorizing the creation and issue of such public securities does not exempt them from taxation, they are, nevertheless, by comity and usage, taxable by such State, whether they belong to residents or non-residents of such State; and, if this power of taxation is exercised, they ought not, for reasons of comity, to be taxed by this State."

Without considering now the effect of exemption, the interpretation to be given to this official exposition of the State's tax laws is evidently that comity requires the recognition by

one State of the right of another to tax exclusively the latter's public debt; for, as a wrongful assessment in one jurisdiction is no bar to a rightful one in another,

47 Mo. page 600, *supra*,

the taxation in the State issuing the bonds must be *rightful* in the view of the instructions. It is submitted, with all diffidence, however, that the taxation *in fact* of the bonds, by the foreign jurisdiction, can not possibly furnish a criterion of the wrongfulness of taxation here, since it is a matter wholly in the discretion of the foreign legislature. Comity, then, forbids the taxing of the stocks here involved.

Such a prohibition would seem, indeed, to be demanded by the *spirit*, if not by the *letter*, of Article IV, sections 1 and 2, of the Constitution of the United States.

(*f.*) The decisions of the Supreme Court of the United States have established :

1. That the States cannot tax agencies of federal government, nor the United States' agencies of State government.

McCulloch vs. Maryland, *supra*.
Dobbins vs. The Comm'rs of Erie Co., 16 Pet. 435.
United States vs. Railroad Co., 17 Wall. 322.

2. That public debts are such agencies of government.

Weston vs. City of Charleston, 2 Pet. 449.

3. That this incapacity to tax arises not from any express prohibition of the Constitution, but from the tendency of such taxation to defeat its general intent and purpose.

4 Wheat., page 426–437.

4. That the test of the taxing power is the State's power to *destroy* the thing taxed ; i. e., if the State of Maryland can not *prohibit* her citizens from leaving their money to her sister States *directly*, she can not do it *indirectly* by taxing such loans in their hands.

2 Pet., page 467, *supra*.

Now, can the State of Maryland constitutionally tax the agencies of government of the States of Pennsylvania, Ohio or New York? Would not her doing so defeat the very purpose and intention of the Federal Constitution? Would it not be inconsistent with the mutual amity imposed upon all the States by its provisions?

And again: Can the State of Maryland forbid her citizens to subscribe to the public loans of her sister States? Would not such a prohibition, independently of its general inconsistency with true constitutional relations between the States, be a direct violation of Article IV, section 2, of the Constitution?

Ward vs. Maryland, 12 Wall. 418.

Unless these difficulties can be solved, the taxation of the bonds here involved, even if not prohibited by comity, can not be sustained under the constitution.

C. How stands the question on authority? The views above expressed are substantially embodied in the opinion of the Supreme Court of South Carolina, in the cause of Jenkins vs. The City of Charleston, *supra*, the authority of which decision, upon the question here involved, is in nowise weakened by its subsequent reversal by the Supreme Court of the United States (6 Otto, 432); since that Court expressly refrains (page 448) from considering any other than the constitutional question.

That public obligations have not necessarily the residence of their holder as a *situs* for taxation, is supported by the cases of—

People vs. Home Ins. Co., *supra*.

Brit. Com. Life Ins. Co. vs. Commrs., 1 Keyes, (N. Y.) 303.

And by the *dictum* of the Supreme Court in State Tax on Foreign-held Bonds, 15 Wall. page 324.

It is true that these authorities appear to lay undue stress upon the location of the *bonds*; i. e., the evidences of debt; but an important distinction is here to be taken between ordin-

ary coupon bonds passing by delivery only, negotiable anywhere, and transferable without the doing of anything necessarily to be done within the State of issue, and such securities as are described in the amendment to the petition in this cause.

Record, page 4, top.
In re Ewin, *supra*.
Alvany vs. Powell, 2 Jones' Eq. (N. C.) 51.
Burroughs on Taxation, sec. 45.
Attorney-General vs. Dimond, 1 Cr. & Jar. 356.

And it is a most significant fact that *no case of any authority* can be found in our many reports where taxation of stocks of this description has been permitted to the State of the holder's residence, or denied to the State of their issue.

VI.—The Effect of Exemption Granted or Taxation Imposed by the Laws of Foreign States Authorizing the Stock's Issue.

Exemption from taxation increases the value of a public stock, and enables it to be issued on more favorable terms. It is, therefore, practically a *capitalization* of future taxes, or a tax imposed *once for all* at the time of issue. As there is no doubt that the authority creating a species of incorporeal personal property *may* give it a *situs* for taxation different from the residence of its owner.

15 Wall., *supra*, page 322.
Tappan vs. Merch. Nat. Bank, 19 Wall. 490.

It is submitted that this is the effect in law of its exemption from taxation by the statute which calls into existence a portion of the State's, or a municipality's public debt, as much as if the same statute had imposed a tax on it, or reserved the right to do so in future.

Unless we can admit the rightfulness of a double taxation, then, such stocks as are mentioned in the extract above cited from the Attorney-General's letter of instruction, (page , *supra*,) and which the pleadings and proof in this cause show

to be a correct description of the stocks herein involved, are exempted from taxation by the State of Maryland *ex debito justitæ*, as well as upon the ground of comity relied upon by the Attorney-General.

VII.—The Law of 1878, chapter 413.

This statute removes all doubt in regard to bonds made by other States and exempted from taxation by the law authorizing their issue; i. e., all the *State* bonds involved in this cause. And, as this provision is not an *exemption*, but a declaration of limitation upon the State's taxing power, (the *exemptions* are set out in the succeeding section,) it is not to be strictly construed, as required by section 3, but will extend to the bonds of municipalities issued for purposes of government, under the sanction of State laws and in the discharge of functions which, but for the existence of such municipalities, the States would be obliged to assume directly.

Mayor and C. C. of Balto. vs. State, 15 Md. 376, page 462.

In re Oliver, 17 Wis. 681.

United States vs. Railroad Company, *supra*.

Under this statute, thus interpreted, and the pleadings and evidence in this cause, there would seem to be no question as to any part of the relief sought by this petition, except the striking off of $58,000 City of Philadelphia 6 per cent. stock, on which taxes are, and always have been, paid to the State of Pennsylvania. (Record, pages 2, 5 and 6.) This stock, it is submitted, is exempted from taxation here upon every principle of law, justice and comity, and the affirmance in full of the order appealed from is asked of this Court.

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Of Counsel for Appellee.

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11/17/12/13/20

Filed Nov 18 1878

THE APPEAL TAX COURT OF BALTIMORE CITY	IN THE COURT OF APPEALS OF MARYLAND.
vs.	OCTOBER TERM, 1878.
ELIZABETH PATTERSON	SPECIAL DOCKET, No. 48.

—o—

SUPPLEMENTAL BRIEF FOR APPELLEE.

The questions arising in this cause are so numerous and interesting, and the interests involved so serious, that the appellee's counsel feel authorized to submit some additional considerations and authorities upon certain of the points treated in their original brief, as well as a few words of comment upon that of the appellants, received after the original brief had been prepared.

And *first*. As to the Statute of 1878, chapter 413.

The effect of this Statute upon that of 1876, chapter 260, so far as State bonds exempted from taxation by the law of the State of issue authorizing their creation, were concerned, was "to obliterate it as completely from the records of the Legislature as if it had never been passed; and it must be considered as a law that never existed, except for the purpose of those actions or suits which were commenced, prosecuted, *and concluded* whilst it was an existing law."

Baugher vs. Nelson, 9 Gill, 299.
Reynolds vs. Furlong, 10 Md. 318.

Atwell vs. Grant, 11 Md. 101.
State, use, &c. vs Norwood, 12 Md. 195.
Price vs. Nesbitt, 29 Md. 263.
Wade vs. St. Mary's Ind. School, 43 Md. 178.
Dashiell vs. The Mayor, &c., 45 Md. 615, p. 622.

There can, therefore, be no question in this cause as to $50,000 Pennsylvania State six per cent. stock, represented by certificates of form No. 1 (record, pages 6 and 7) in any view; none as to $58,000 City of Philadelphia six per cent. stock, represented by certificates of form No. 4, (record, page 9,) if "bonds made by any State" are to be construed as including bonds made by a municipal corporation constituting an agency of government in a State, and under authority derived therefrom; (see authorities collected on 17 Wall., page 328, notes); none as to the State of Ohio and State of New York stock involved, if the appellee has rightly construed the pleadings, (original brief, pages 2, 3 and 4); and none as to the New York city and county stock, if *both* her lastly advanced positions can be sustained. There remains in controversy, therefore, only the $58,000 City of Philadelphia six per cent. stock, represented by certificates of forms Nos. 5, 6 and 7. (Record, pages 9-11.)

Secondly. Are stocks of the kind here involved "moveable properties," for the purpose of taxation? (Brief for appellants, page 5.) The *things* here taxed are *debts* due the petitioner, not *bonds* or *certificates* evidencing such debts; the two are distinguishable.

Pelham vs. Rose, 9 Wall. 103, page 106.
Pelham vs Way, 15 Wall. 196, page 202.
Miller vs. The United States, 11 Wall. 268.
Brown vs. Kennedy, 15 Wal. 591, page 599.

Although we may not go so far as to say with the Supreme Court of the United States that, for purposes of taxation, "debts are not property," (6 Otto, 440,) yet it is evident that mere choses in action are given the incidents of property rather by legal fiction and metaphor than from any inherent pro-

priety. Indeed the most essential attribute of property (assignability) was denied them by the common law, and given only by statute and the custom of merchants.

Williams on Personal Property, pages 4* and 5*.

Clearly then such properties will be held to be *moveable* or *immoveable*, according to the purpose for which they are considered, and the legal fiction which gives them *existence* will locate them now in one place, now in another, as the ends of justice may require. In determining questions of marital rights, alienation and succession, debts have been held to have only the *situs* of the creditor, but for other purposes, such as those of attachment and confiscation, they have been given a different *situs* by decisions of unquestionable authority.

Miller vs. The United States, *supra*.
Brown vs. Kennedy, *supra*.
Green vs. VanBuskirk, 7 Wall. 139.

In the absence then of any direct adjudication upon the subject, this Court will determine the *situs* for taxation of these stocks, and give them the characteristics of moveable or immoveable properties (for the purposes here involved) as principle, equity, analogy, policy, comity, or the Constitution may demand, and the argument on these points in the appellee's original brief (pages 7 to 11) is respectfully pressed upon the Court's attention.

To the proposition that this question has been determined in Maryland by a *legislative usage*, (brief for appellants, pages 5 and 8,) it is sufficient to reply that the law of 1878, (plainly intended as a *declaratory* statute,) and the letter of instructions of the Attorney General, (quoted on page 9 of original brief,) indicate the *present* financial policy of this State, and, at least, outweigh the provisions of repealed statutes, whose validity has never been sustained by the decision of this Court.

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