

560
IN THE CIRCUIT COURT
OF BALTIMORE CITY

Lucy J. Williams,
et al.

vs.

William F. Broening,
Mayor,
et al.

DECREE.

29944
210

MACHEN & WILLIAMS
ATTORNEYS AND COUNSELLORS AT LAW
1109-1119 CALVERT BUILDING
BALTIMORE

Oct. 31st October 1919

Lucy J. Williams,)
)
 et al.)
)
 vs.)
)
 William F. Broening, Mayor,)
)
 et al.)

IN THE
CIRCUIT COURT
OF
BALTIMORE CITY.

In obedience to the mandate of the Court of Appeals,
IT IS this *31st* day of *October*, Nineteen hundred and
nineteen, ADJUDGED, ORDERED AND DECREED by the Circuit Court of
Baltimore City, that an injunction issue as prayed in the Bill
of Complaint; AND IT IS FURTHER ORDERED that the costs of this
case be paid by the defendant the Mayor and City Council of
Baltimore.

James P. Gorter

Approved this *31st* day of
Oct 1919.

Roscoe M. Mumford
City Solicitor.

IN THE CIRCUIT COURT OF
BALTIMORE CITY.

560
21919

LUCY J. WILLIAMS, et al,

VS.

WILLIAM F. BROENING, Mayor
of Baltimore, et al.

ORDER.

29944

Mr. Clerk:-(7)

Please file.

Pl. 9 October 1919

Lucy J. Wilbains
et al

IN THE
Circuit Court
OF
BALTIMORE, CITY.

vs.

William F. Broening
Mayor,
et al.

Mr. Clerk:

Please enter an appeal on behalf of *the Plaintiffs*

from the *order* ^{refusing an injunction} passed on the
to the Court of Appeals of Maryland.

9th day of *October* 191*9*

J. C. France

Arthur W. Macken

Solicitor for Appellants

State of Maryland, Baltimore City, to wit:

I hereby certify, that on this _____ day of _____ 191____, before me, the
Subscriber, Clerk of the Circuit Court of Baltimore City, personally appeared _____

and made oath in due form of law that this appeal is not made for the purpose of delay.

Clerk of the Circuit Court of Baltimore City.

Circuit Court

1919

Williams et al.

vs.

Broening
et al.

ORDER FOR APPEAL

No. 9944

(8)

Filed 9th October 1919

In the Circuit Court of Baltimore
City.

*D 56
1919*

Lucy J. Williams, et al.

vs.

Hon. Wm. F. Broening, et al.

A G R E E M E N T.

*A 9944
26)*

Pl. 9th October 1919

Lucy J. Williams, et al.,

:

In the Circuit Court

:

vs.

:

of

:

Hon. William F. Broening, et al.

:

Baltimore City.

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IT IS AGREED that this Court or the Court of Appeals, in case of an appeal, may for the purpose of determining the character of the Daily Record and the Municipal Journal, examine and consult any copies of said papers or the files thereof in any public library, to the same effect as if incorporated in the Record.

IT IS ALSO AGREED that the copies of the Daily Record of June 4th, 1918 and the Municipal Journal of June 7th, 1918, filed as exhibits in this case, need not in the event of any appeal be copied or printed as part of the record, but that either party shall have right to refer to the originals with the same effect as if they had been so copied or printed.

J. C. Francis
Arthur W. Mackenbach
Solrs for Plaintiffs
James M. Mouton
City Solicitor

IN THE CIRCUIT COURT OF
BALTIMORE CITY.

560
201919

Lucy J. Williams,
et al.

vs.

William F. Broening, Mayor of
Baltimore,
et al.

BILL OF COMPLAINT.

Mr. Clerk: Please file with
four ~~the~~ Exhibits.

J.C. France
Arthur W. Machen
Solicitors for Plffs.

09944
(11)

MACHEN & WILLIAMS
ATTORNEYS AND COUNSELLORS AT LAW
1109-1119 CALVERT BUILDING
BALTIMORE

Filed

Lucy J. Williams and)	
Sidney Turner Dyer)	IN THE
vs.)	
William F. Broening,)	CIRCUIT COURT
Mayor of Baltimore,)	
The Mayor and City Council of)	OF
Baltimore, a body corporate,)	
and)	
Marion McKee,)	BALTIMORE CITY.
Robert H. Carr, and)	
R. Frank Smith,)	
Supervisors of Elections of)	
the City of Baltimore,)	

To the Honorable the Judge of the Circuit Court of
Baltimore City:

Your oratrices, suing on behalf of themselves and all other taxpayers of the City of Baltimore who may come in and contribute to the expenses of this suit, complaining say:

1. That the defendant William F. Broening is the Mayor of Baltimore City, and that the defendant The Mayor and City Council of Baltimore is a municipal corporation existing under the Constitution and Laws of Maryland. The Defendants Marion McKee, Robert H. Carr, and R. Frank Smith constitute and are the Board of Supervisors of Elections of the City of Baltimore, charged with duties prescribed by law.

2. That your oratrix Lucy J. Williams is a citizen and resident of Baltimore City, and is seised in fee simple of a vacant lot of ground lying and being in that portion of the City, hereinafter designated as the Old Annex, which was annexed to and became a part of said City of Baltimore under and in pursuance of the Act of 1888, Ch. 98, fronting 160 feet on the east side of Hilton Street with a depth of about 147 feet. All of said lot is landed property, bounded on one side by a paved public street, and lies within 200 feet of said street, but is not in a block containing not exceeding 200,000 superficial square feet, formed and bounded

on all sides by intersection streets, avenues or alleys, opened, graded, curbed and otherwise improved from curb to curb by pavement, macadam, gravel or other substantial material, Less than six houses are now built on the block in^{which} your said oratrix's said landed property lies. That your oratrix Sidney Turner Dyer at the time of the passage of the said Acts of 1888, Ch. 98, was seised in fee simple of an undivided half interest in a tract of land known as Coldstream lying in the said Old Annex between the Harford Road and Montebello Avenue, containing about 100 acres, and approximately bisected by a public road or street now known as Taylor Street. That since the passage of said Act of 1888, Ch. 98, your said oratrix has acquired by deed dated August 8th, 1916, and now recorded among the Land Records of Baltimore City in Liber S. C. L. No. 3074, folio 216 &c. the other undivided half interest in said tract of land, so that your oratrix Sidney Turner Dyer is now seised of the whole thereof in fee simple in severalty. All of said tract of land consists of landed property, no streets, avenues or alleys having been opened and constructed through the same. Said Taylor street, formerly known as ^{is an old country road, and} Jenkins Lane, although a public road or street, has never been paved, and has been allowed by the Mayor and City Council of Baltimore to become absolutely impassable for horses and wagons, and very difficult of passage even by foot passengers. Your said oratrix and her predecessors in title have been constantly endeavoring to sell and dispose of said tract of land in parcels for building lots, but have been unable to do so because of the failure of the defendant the Mayor and City Council of Baltimore to provide adequate street and other city facilities therefor. That in or about the year 1915

and her then co-tenant,
your said oratrix, despairing of obtaining adequate means of
access from the Mayor and City Council of Baltimore, purchased
at great expense, to-wit, nearly \$30,000, a lot or parcel of
land lying between her said property and Harford Road, and
proceeded to tear down and destroy a building erected thereon,
and to dedicate a public street through the same and without any
cost or expense to the Mayor and City Council of Baltimore. Your
oratrix and her then co-tenant also paid one half of the cost
of grading and paving said street, and agreed that the abutting
property should be liable to ~~tax~~ paving tax as though no part of
the expense of grading and paving had been paid by the abutting owner so
that by reason of the initial payment and the annual instalments
of paving tax, the Mayor and City Council has been or will be
~~virtually~~ reimbursed for almost the entire cost of the grading
and paving thereof. By reason of the access afforded by this
street so opened, graded and paved at the expense of your said
oratrix and her then co-tenant, your oratrix has been able to
sell a ^{portion but a} comparatively small portion of her said tract of land in
building lots for building purposes. Your oratrix has also been
able to sell another comparatively small portion at the northeast
corner of her said tract of land for building purposes, and is
now proceeding to erect at her own expense twenty-two dwelling
houses adjacent to the portion so sold, having been unable to
sell the land on which said dwellings are being erected in con-
sequence of the failure of the Mayor and City Council of Baltimore
to open and construct streets through the same and thus make her
land available as urban property. Your oratrix and her then
co-tenant also offered to dedicate Aisquith Street through her said
property from Twenty-fifth Street to Montpelier Street along the
lines approved by the Topographical Survey Commission and by
City ordinance, but the defendant the Mayor and City Council

of Baltimore refused to accept such dedication. The Mayor and City Council of Baltimore has passed ordinances for the opening of a portion of said Aisquith Street and for Curtain Avenue leading up to and taking a portion of the southern part of your oratrix's said tract, but has allowed the proceedings to sleep and has never carried them to completion. Ordinance No. 416 of the Mayor and City Council of Baltimore approved December 9, 1909, provided for the opening of a street through your oratrix's said property, but upon lines so laid out as to be destructive of a large part of the real value of your oratrix's said tract; nevertheless the proceedings under said Ordinance have been allowed to hang over said property and interfere with your oratrix's development thereof. The Commissioners for Opening Streets did not complete their proceedings under said Ordinance until four years after its passage, to-wit, on December 2, 1913. An appeal by your said oratrix and others taken, from the unjust and oppressive action of the Commissioners for Opening Streets in said matter was finally settled in or about the month of October, 1917, resulting in a reduction of nearly \$30,000 in the net benefits assessed by the said Commissioners; nevertheless the said street has never been constructed, graded, paved or curbed, and is still totally impassable. As above stated, the only public road or street traversing said property, namely, Taylor Street, has been allowed to remain in a totally impassable condition. Consequently, although your oratrix is no longer able to utilize her said land as farming land, she has not been able to sell or dispose of it in building lots for urban purposes.

3. In the year 1888 an insistent demand arose on the part of the people of Baltimore City for an extension of the City limits. At that time it was very doubtful whether such annexation could constitutionally be effected without the approval of a majority

of the legally qualified voters in the territory to be annexed, and high legal authorities, including at least two of the judges of the Court of Appeals as constituted in said year 1888, were of opinion that such annexation could not be effected without such approval. Thereupon the General Assembly of Maryland passed the Act of 1888 Ch. 98, entitled, "An Act to extend the limits of Baltimore City by including therein parts of Baltimore County" and provided for the submission of the question of annexation vel non to the qualified registered voters residing in the portions of Baltimore County proposed to be annexed, at a special election to be held for that purpose on the third Tuesday in May, 1888; and in order to induce the inhabitants of the district proposed to be annexed to approve such annexation, Section 19 of said Act provided the following solemn compact:-

SEC. 19. And be it further enacted, That until the year nineteen hundred, the rate of taxation for city purposes upon all landed property situated within the territory which, under the provisions of this act, shall be annexed to the city of Baltimore, and upon all personal property liable to taxation in said territory, whether owned by persons, corporations or otherwise, and upon which taxes would be paid to Baltimore county if said territory should not be annexed to the said city, shall at no time exceed the present tax rate of Baltimore county; * * * from and after the year 1900 the property, real and personal, in the territory so annexed, shall be liable to taxation and assessment, therefor, in the same manner and form as similar property within the present limits of said city may be liable; provided, however, that after the year 1900 the present Baltimore county rate of taxation shall not be increased for city purposes on any landed property within the said territory until avenues, streets or alleys shall have been opened and constructed through the same, nor until there shall be upon every block of ground so to be formed at least six (6) dwelling or store-houses ready for occupation."

Upon the faith of this solemn promise and agreement, a majority of the legally qualified voters in the district, in which your eratrix' said parcels of land lay voted in favor of annexation. But for the said solemn promise and compact, the said voters would not have approved said annexation. The vote in the district in which the property of your eratrix Lucy J. Williams lies was 613 for annexation, and 423 against annexation; and the vote in the

district in which the land of your cōatrix Sidney Turner Dyer lay was 1896 for annexation, and 1538 against annexation.

4. After the year 1900 questions arose as to the meaning of the clause above quoted in the Annexation Act of 1888, Ch. 98, which provided that after the year 1900 the rate of taxation which prevailed in Baltimore County in 1888 should not be increased for City purposes on landed property within the said territory until avenues, streets or alleys should be opened and constructed through the same, or until there should be upon every block of ground so to be formed at least six dwelling houses or stores ready for occupation. Thereupon, the General Assembly, for the purpose of resolving such doubts, and also for the purpose of making the law more favorable to tax payers in said Old Annex than the then existing law as interpreted by the Court of Appeals, passed an interpretative act (Laws of 1902 Ch. 130) defining the words "landed property", "until avenues, streets or alleys shall have been opened and constructed", and "block of ground". The said Act did not undertake to impair or affect the rights of persons who would have been exempt from taxation under the terms of said original Act of 1888, Ch. 98 as construed by the Court of Appeals at any higher rate than the rate of 67 cents on the hundred dollars, which was the rate prevailing in Baltimore County at the time of the passage of the said Act of 1888. The Mayor and City Council of Baltimore challenged the validity of said interpretive Act of 1902 Ch. 130, on the ground that the same was an impairment of the obligation of contracts; but the Court of Appeals held that there was no contract contained in or evidenced

by the said Act of 1888 Ch. 98, of which the Mayor and City Council of Baltimore, being a mere instrumentality of the State Government, could take advantage.

5. Subsequently, to-wit, by Act of 1908 Ch. 286 (Laws of 1908, p. 581), the General Assembly of Maryland passed an Act to repeal and re-enact with amendments Section 4 of Article 4 of the Code of Public Local Laws of Maryland as repealed and re-enacted by Ch. 123 of the Acts of 1888 (being a mere codification of the above-quoted provisions of Section 19 of the Acts of 1888 Ch. 98), and also to repeal and re-enact with amendments Section 4 A of said Article as the same was enacted by said Act of 1888 Ch. 123. As above-mentioned, the effect of said Act of 1908 Ch. 286 was to classify all real and leasehold property in the said Old Annex into three separate classes, to be known as urban, suburban and rural property, for purposes of city taxation. Urban property was defined to be all real and leasehold property in said territory which was liable to full city taxation at the time of the passage of said Act of 1908, and all real and leasehold property situated in said annexed territory, located in a block of ground not exceeding 200,000 superficial square feet, formed and bounded on all sides by intersecting streets, avenues or alleys, opened, graded, curbed and otherwise improved from curb to curb by pavement, macadam, gravel or other substantial material. All such urban property was declared to be subject to the same rate of city taxation as real and leasehold property within the old limits of said city as existing in 1888 might be subject. Suburban property was defined to be, every lot, or piece of real and leasehold property to a depth not exceeding 200 feet, situated in said Old Annex and fronting, binding or abutting on any public street, avenue or highway, lighted at public expense, and completely paved from curb line to curb line, including gutters, with bitulithic, asphalt,

Belgian blocks, vitrified bricks, macadam in good condition as laid prior to the passage of said Act, or, if laid subsequently, or laid without direct assessment for the cost thereof, in whole, in part, upon the abutting property owners, unless the owners of a majority of front feet of property binding thereon should expressly assent to said assessment, and laid in a manner prescribed in said Act of 1908. Such suburban property was made liable to a rate of city taxation equal to two-thirds of the rate to which urban property might be liable, but in no year exceeding \$1.30 on the hundred dollars of assessed value of such suburban property. Rural property was defined to be all real and leasehold property in said annexed territory which is not either urban or suburban property as hereinbefore defined. The lot or parcel of ground belonging as aforesaid to your oratrix Lucy J. Williams is classified, by the Appeal Tax Court as suburban property, and your said oratrix since the year 1917, prior to which it was classified as rural property, has paid the suburban rate of taxation thereon. Practically the whole of the said property of your oratrix Sidney Turner Dyer is classified as rural property, and your said oratrix has paid the rural rate of taxation thereon.

6. Each of your oratrices is the owner of property in the old city limits of Baltimore as they existed prior to the year 1888, upon which they respectively pay city taxes at the full city rate.

7. Under or under color of Article XI-A of the Constitution of Maryland as adopted by the people on November 2, 1915, pursuant to Act of 1914 Ch. 416, a Charter Board was elected by the qualified voters of Baltimore City at the General Election on November 6, 1917, to frame a charter for the City of Baltimore in accordance with said Article of the Constitution. A charter was accordingly drawn up by said Charter Board, and presented to the Mayor of Baltimore on May 4, 1918. Said Charter purported to be a repetition word for word of Article 4 of the Code of Public

Local Laws of Maryland as then existing, with one or two exceptions wholly immaterial to this suit. Section I of Article XI-A of the constitution of Maryland provided that the Mayor of Baltimore within thirty days after the report of said Charter to him should "publish the same in at least two newspapers of general circulation published in said the City of Baltimore"; and your oratrices are advised and therefore charge that said Charter so presented could not legally be adopted by the majority of the voters at any general or congressinal election without the previous observance of said requirement of publication, which said requirement was intended to afford to all the voters a full and complete knowledge of said proposed Charter. Nevertheless the Mayor of Baltimore did not cause said Charter so presented to him to be published in at least two newspapers of general circulation, or in any newspaper of general circulation in the City of Baltimore within thirty days after it was reported to him, or at any time whatsoever. The Mayor of Baltimore caused said Charter to be published in the Daily Record on June 4, 1918, and the Municipal Journal of June 7, 1918. Said Daily Record is a daily paper published in Baltimore City, but is not ~~exnewspaper, of~~ in any sense of the word a newspaper of general circulation. It does not contain or purport to contain general news, and its circulation is confined to a very limited class of the community, namely, lawyers, real estate men, and a very few other business men. With the exception of paid advertisements, consisting chiefly of advertisements of real estate sales and publications of legal notices such as orders nisi and orders of publication, it consists almost exclusively of a few items of notices of court proceedings and of the daily assignments for the several courts in Baltimore City and the Court of Appeals, publications of opinions of the Court of Appeals and written opinions rendered in the local courts of Baltimore City, notices of the deeds, mortgages, etc., recorded

in Baltimore City or Baltimore County, and a few items of so-called real estate notices. A copy of the issue of June 4, 1918, containing the publication of the said Charter drafted by the said Charter Board is herewith filed as part of this Bill marked Plaintiffs' Exhibit No. 1. Said Municipal Journal is not a newspaper at all, in any proper sense of the word, and is certainly not a newspaper of general circulation, but is a publication officially printed by the City of Baltimore. It claims to have a regular circulation of 12,000, but your oratrices are informed and believe, and therefore charge, that practically all of its circulation is a free circulation, and that it has only an insignificant number of paid subscribers. The character of said paper is sufficiently shown from a copy of the issue of June 7, 1918, containing the publication of said City Charter, a copy of which is herewith filed as part of this Bill marked Plaintiffs' Exhibit No. 2. Chapter 477 of the Acts of 1914 provides that any notice or advertisement required by any law or ordinance to be published in a daily newspaper may be published in the Municipal Journal instead of in a daily newspaper. Your oratrices are advised and therefore charge that said act expressly recognizes that said Municipal Journal is not a newspaper; and, moreover, said Act of Assembly applies only to notices or advertisements required to be published by any State statute or City ordinance, and cannot apply to notices required by the Constitution of the State to be published in a daily newspaper of general circulation. The publication of orders nisi, orders of publication, and similar legal notices, in the Daily Record has become very common in Baltimore City, where such notices are required to be published in a daily newspaper; and your oratrices are advised and believe, and therefore charge, that in the Constitutional Amendment now standing as Article XI-A of The Constitution, the words "newspaper of general circulation" were inserted for the very purpose of preventing publication in such a paper of limited circulation as the Daily Record.

Your oratrices are advised and believe that there is

Your oratrices are informed that there are five newspapers of general circulation published in Baltimore City, namely, The Sun, The Evening^{Sun}, The American, The Star and The News. The paid circulation of said papers, according to information received by your oratrices from the offices of said papers or from the columns thereof is about as follows:

Sun (Morning Sun)	average for Sept. 1919	- - -	94,794.
Evening Sun	" " " "	- - -	68,652
American	average for last six months	- - -	61,800
Sunday Sun	average for Sept. 1919	- - -	125,384
Star	average for last six months	- - -	33,927
News	circulation on October 8, 1919	- - -	112,850

~~The Daily Record does not even claim to have a circulation of more than , so that your Honor can see that it cannot in any proper sense of the word be regarded as a newspaper of general circulation.~~

8. Without any publication of said Charter other than aforesaid in the Daily Record and Municipal Journal, the said Charter prepared by said Charter Board was submitted to the voters of a part of the City of Baltimore at the Congressional Election held on November 5, 1918, and was adopted by a majority of the votes cast either for or against said ordinance; but your oratrices are informed, and therefore believe, that only a small fraction of the registered voters of Baltimore City voted thereon, and that a still smaller proportion knew what was contained in the said Charter on which they were voting. Said proposed Charter was not submitted at all to the qualified voters in Wards 25, 26, 27, and 28, which had been annexed to the City of Baltimore on June 1, 1918, more than five months prior to the said election of November 5, 1918; and your oratrices are also advised that the failure so to submit the same to the voters of said annexed Wards vitiated the adoption of said Charter.

9. Nevertheless, the defendants have proceeded as though said City Charter had been legally adopted, and as though the City

of Baltimore were thus made subject to Article XI-A of the Constitution of Maryland. Recently, under or under color of said Article XI-A of the Constitution and of the supposed adoption of said Charter submitted as aforesaid, a so-called petition was circulated and caused to be signed by a large number of qualified voters residing in said City of Baltimore entitled, "Petition proposing an Amendment to the Charter of Baltimore City making Taxes Uniform in the Old Annex." Said Petition consisted of printed sheets in the form a duplicate of one of which is herewith filed as part of this Bill marked Plaintiffs' Exhibit No. 3. Said Petition, as by reference to said Exhibit No. 3 will more certainly appear, purports to amend Section 4 of the City Charter by abolishing in the Old Annex the distinction between rural, suburban and urban landed property, and subjecting all landed property in said Old Annex to the full rate of city taxation, in disregard not only of the provisions of said Act of 1908 but of the contract contained in the Act of 1888 Ch. 98. The signatures to said Petition were obtained by representations contained in a preamble set forth in said Petition, as will by reference to said Exhibit No. 3 more fully and at large appear. Said representations were as follows:

"WHEREAS, The territory annexed to Baltimore City in the year 1888, now commonly called the Old Annex, was expected at that time to be practically all brought under the full City rate of taxation by the year 1900; and

"WHEREAS, A section of said Old Annex, representing an assessed value of about \$23,000,000, is still taxed at only 67 cents or one-third of the regular City rate, a rate of taxation considerably lower than applies on property in the remotest section of Baltimore County, although said Old Annex enjoys City jurisdiction; and

"WHEREAS, Another section of said Old Annex, representing an assessed value of about \$27,500,000, still enjoys a favored rate of \$1.30, although consisting of a highly developed and exceedingly valuable residential section which obtains all municipal advantages; and

"WHEREAS, The above sections have been for many years unfairly favored at the expense of the property owners in the old City."

At least one of said representations is absolutely false, namely, the assertion that it was expected at the time of the passage of the Annexation Act of 1888 that practically all the territory annexed would be brought under the full city rate of taxation by the year 1900; and as conclusive evidence that said representation was false, your oratrices refer to the said Act of 1888 itself, which as hereinabove set forth makes express provision for the rate of taxation to be applied to such landed property in the said annexed territory as should not have been developed by opened and constructed streets and divided into blocks improved by not less than six dwelling houses or stores. Your oratrices also believe that the representation in said preamble that the said Old Annex has been for many years unfairly favored at the expense of the property owners in the Old City is also untrue, but assert that this representation is to some extent a matter of opinion and inference, and therefore its untruth is not to the same extent susceptible of legal proof as is the case with reference to the other representation hereinabove mentioned. Your oratrices say that no injustice whatever is done to the property owners in the Old City by carrying out the terms of the Annexation Act of 1888, more especially as amended by the Act of 1908, inasmuch as the City can at any time subject all the property in the

said Old Annex to the full City rate of taxation by performing the duty of the said City to afford urban facilities to said property by the construction of streets through the same. Nevertheless, by means of said representations a large number of signatures, as above set forth, have been obtained to said Petition, and it is claimed that more than 10,000 registered voters have signed the same in the manner required by Section 7 of said Article XIA of the Constitution of Maryland. Whether such claim is justified your oratrices are unable at this time to say, and inasmuch as it is impossible to investigate the ^{number and} authenticity of the signatures so purporting to be attached to said Petition before the election, your oratrices do not tender as an issue in this case the question whether or not such signatures in manner and form and to the number aforesaid are in fact attached thereto, but assume for the purposes of this suit that such signatures in the manner and form and to the number aforesaid are so attached. At all events, the said Petition has been lodged with the Mayor of Baltimore, namely, William F. Broening, and said defendant is acting upon the assumption that said Petition has been duly and properly signed, and has inserted in the Baltimore American, a newspaper published in said City of Baltimore, an advertisement announcing that said so-called Amendment to Section 4 of the Charter of Baltimore City will be submitted to the qualified voters of said City at the General Election to be held on November 4, 1919, and, unless restrained by your Honor, will continue to publish said notice once a week until the said election; and, unless restrained by your Honor, the Mayor and City Council of Baltimore will pay for the publication of said notice out of public funds belonging to the Mayor and City Council of Baltimore, which, as aforesaid, is a public municipal corporation in which your oratrices are taxpayers. A copy of said advertisement is herewith filed as a part of this Bill marked Plaintiffs' Exhibit No. 4.

Exhibit No. 2. Your oratrices are informed and verily believe that the defendants Marion McKee, Rober H. Carr and R. Frank Smith, constituting the Board of Supervisors of Elections of the City of Baltimore, are preparing to, and, unless restrained by your Honor, will, cause the said so-called Petition or initiative measure to be printed at public expense on the official ballot to be used at the general election to be held on November 4, 1919. Another proposition to amend the City Charter, in which your oratrices as taxpayers have a great interest, to-wit, a proposition to exempt from municipal taxation in said City all merchandise held for sale, and to tax all buildings at less than the full City rate by an amount progressively greater each year until in the year 1926 and thereafter no building shall be taxed for municipal taxation at more than fifty per cent of the full City rate, is to be submitted to the voters of the City for rejection or approval at the same election. The effect of this amendment to the Charter if adopted will be to throw a heavier burden of municipal taxes upon owners of unimproved land, including your oratrices. If both said measures are placed upon the ballot at the same election, voters who are in favor of the said amendment intended to subject all property in the Old Annex to the fully City tax rate will be apt to vote in favor of both propositions; and therefore although an approval of said Annex Tax proposition might be void in law, still the presence of both measures on one ballot would confuse the voters as aforesaid and thus work irreparable injury to your oratrices.

10. Your oratrices are advised and therefore charge that there is no warrant of law for the publication of the said advertisement of for the payment therefor with municipal funds, or for placing said proposed measure to tax all real property in the Old Annex at the full City rate upon the official ballot, for the following reasons, among others:

(1) Because the said charter prepared by the Charter Board and submitted to the voters of a part of the City at the Election in November, 1918 has never been legally and validly adopted and is not the law, and because Article XIA of the Constitution of Maryland has thus never become applicable to Baltimore City.

(2) Because Section 2 of Article XIA of the Constitution of Maryland provides that no charter adopted there under for the City of Baltimore shall enlarge or extend the powers granted to the City of Baltimore prior to the year 1915 as set forth in Section 6 of Article 4 of the Code of Public Laws of Maryland. ~~XX~~

Section 6 of said Article as it existed in the year 1915 provided that the City should have power among other things to levy direct taxes annually upon the assessable property of the City "subject to the provisions and limitations herein contained." The words last quoted were inserted in said Section for the first time in the year 1898 when the Legislature by Act of 1898 Ch. 123 recodified the Public Local Laws applicable to Baltimore City, and for the first time incorporated therein, to-wit, in Section 4, the provisions hereinabove referred to in the Act of 1888 Ch. 98 limiting the power of taxation in the said Old Annex. Wherefore, as your oratrices are advised and therefore charge, Section 6 of the City Charter as it existed in the year 1915 by reference incorporated therein the provisions of Section 4 (either as originally adopted or as amended by the Act of 1908 Ch. 286), so that no charter under said Article XIA of the Constitution could confer upon the Mayor and City Council of Baltimore power to tax property in the Old Annex at greater rates than those specified by said Section 4.

(3) Because Section 6 of said Article XIA of the Constitution expressly provides that said Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon the City, and because the Legislature has not conferred upon the City of Baltimore power to tax suburban and rural property (as defined in the Act of 1908 Ch. 286) lying in the Old Annex at the full city tax rate, but on the contrary has expressly denied such power.

(4) Because said proposed measure if adopted would violate that clause of the Constitution of the United States which provides that no state shall pass any law impairing the obligation of contracts.

(5) Because the General Assembly in proposing said Article XIA of the Constitution, and the people in adopting it, never in-

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tended to confer upon the City of Baltimore power to alter the conditions on which the Legislature has annexed territory to said City. If this could be done in this case, then next year Baltimore City can abrogate the terms of the Annexation Act of 1918, and subject all the annexed portions of Baltimore and Anne Arundel Counties to the full city tax rate.

Your oratrices also charge that the pendency of said proposed initiative measure constitutes a cloud upon the title of your oratrices to their said lands, and interferes with the sale thereof by your oratrices.

To the end therefore:-

1. That the defendants the Mayor and City Council of Baltimore and William G. Broening, Mayor, and each of them, their officers, agents, servants and employees may be restrained and enjoined by writ of injunction, preliminary as well as perpetual, from continuing the publication of said advertisement a copy whereof is filed herewith as Plaintiffs' Exhibit No. 2, and specially may be restrained and enjoined from devoting any of the funds or property of the City of Baltimore towards defraying the cost of publishing such advertisement.

2. That the defendants Marion McKee, Robert H. Carr and R. Frank Smith, Supervisors of Elections, their agents, servants and employees, may be restrained and enjoined by writ of injunction, preliminary as well as perpetual, from placing upon the official ballot to be used at the General Election to be held in the City of Baltimore on November 4, 1919, the said proposition to amend Section 4 of the Charter of the City of Baltimore in the manner and form in this Bill of Complaint set forth, and specially from using any public money or funds or funds under their control for defraying any part of the cost of printing such proposition

on said official ballots, and from signing any warrant, order or other authority for such payment.

3. That your oratrices may have such other and further relief as the nature of the case may require and to your Honor may seem meet.

May it please your Honor to grant unto your oratrices the writ of subpoena against the defendants Marion McKee, Robert H. Carr and R. Frank Smith, all residing in the City of Baltimore, Supervisors of Elections of the City of Baltimore, and William F. Broening, a resident of Baltimore City, Mayor of Baltimore, and the Mayor and City Council of Baltimore, a body corporate, commanding them and each of them to be and appear in this Honorable Court upon some day certain to be therein named to answer the premises and abide by and perform such decree or order as may be passed herein, and also the writ of injunction, preliminary as well as perpetual, as aforesaid.

And as &c.


Lucy J. Williams

Arthur G. Marshall
for Plaintiff

STATE OF MARYLAND, BALTIMORE CITY, to-wit:

BE IT REMEMBERED that on this 9th day of October, in the year 1919, before me the subscriber a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Lucy J. Williams, one of the plaintiffs in the foregoing Bill of Complaint, and made oath in due form of law that the matters and things set forth therein are true as therein stated to the best of her knowledge and belief.


Witness my hand and Notarial Seal.


Harry L. Drake
Notary Public.

STATE OF MARYLAND, BALTIMORE CITY, to-wit:

BE IT REMEMBERED that on this 9th day of October, in the year 1919, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, aforesaid, personally appeared Benjamin Reynolds, who being first sworn in due form of law deposed and said, that he is the Agent of the Plaintiff Sidney Turner Dyer, and has charge and supervision of her real estate and other property in the City of Baltimore, and that he is familiar with her property referred to in the foregoing Bill of Complaint, and has personal knowledge of the matters and facts in said Bill set forth as to said property, and that all of such statements are true as therein stated, and that all other matters in said Bill of Complaint set forth are true to the best of this Affiant's knowledge and belief.

Witness my hand and Notarial Seal.


Harry L. Drake
Notary Public.

4-05 read

375

Circuit Court.

560 a No. 59 Docket.
1919

Williams et al

vs.

Greening, et al

INJUNCTION.

5-2-19

No. 9944
(11)

Filed By Clerk 1919

3

Injunction and copy served on William J. Browning Mayor and the Mayor and City Council of Baltimore, a corporation, by service on Roland B. Marchant, City Solicitor, on the 3rd day of November, 1919, at 4.30 o'clock. P. M.
Also Injunction and copy served on Morris M. Kee, Robert N. Carr and B. Frank Smith, Supervisors of Elections on the 3rd day of November, 1919, at 4.25 o'clock P. M. in presence of Morris Finkelman.

James J. M. Gudy Sheriff.

Fee \$5.00

The State of Maryland,

Marchmont
11/3/19 - Roland R

To William F. Broening, Mayor
Mayor and City Council of Baltimore
Marion McKee
Robert H. Carr
R. Frank Smith
Supervisors of Elections of
Baltimore City

Greeting:

Whereas, Lucy J. Williams and Sidney Turner Dyer

have exhibited to us in our CIRCUIT COURT OF BALTIMORE CITY their Bill of Complaint for relief in Equity, and for AN INJUNCTION to restrain you the said William F. Broening, Mayor, Mayor and City Council of Baltimore, Marion McKee, Robert H. Carr, and R. Frank Smith, Supervisors of Elections of Baltimore City, you, and each of you, your agents, servants and employees from continuing the publication ofc "A Charter or Form of Government for the City of Baltimore", and from using any of the funds or property of the City for the payment for said publication, and from placing upon the official ballot to be used at the General Election to be held in the City of Baltimore on November 4th, 1919 the proposition to amend Section 4 of the Charter of the City of Baltimore and from using any of the public fund to defray the cost of printing said proposition on said official ballott and from signing any warrant, order or other authority for such payment

until the matter can be heard and determined in equity.

Now, Therefore, these are to COMMAND and strictly to ENJOIN and PROHIBIT you, the said William F. Broening, Mayor of Baltimore, the Mayor and City Council of Baltimore, Marion McKee, Robert H. Carr and R. Frank Smith, Supervisors of Elections of Baltimore City, you and each of you, your agents, servants and employees from doing the things above mentioned

until the further order of our said Court in the premises.

Witness the Honorable MORRIS A. SOPER, Chief Judge of the Supreme Bench of Baltimore City, the 8th day of September 1919

ISSUED the 31st day of October 1919.

Charl Whitford

Clerk.

561
a 1919

No. 91

G. Ethel Pe Jones

to
Wm. J. Broening
et al.

MANDATE.

a 9945
(29)

J. A. G. Decker 1919

Court of Appeals of Maryland.October Term 1919.

Z. Ethel Pope Jones

vs.

William F. Broening, Mayor, et al.

Judge Adkins delivered the opinion of the Court.

This is an appeal from the refusal of the Circuit Court of Baltimore City to enjoin the Mayor and City Council of Baltimore from continuing the publication of an advertisement of a proposed amendment to the Charter of said City relating to the exemption of merchandise and the lower taxation of buildings, and the Supervisors of Election of said City from placing upon the official ballot to be used at the General Election to be held in said City on November 4th, 1919, and from using any public money or funds for defraying the costs of such advertisement or of printing said proposition on the official ballots.

The said amendment was proposed as a new sub-section to Section 6 of said Charter to follow immediately after sub-section 28(B), to be known as sub-section 28 (BB) and is as follows:

"BB" Exemption of merchandise and lower taxation of buildings.

"In order to encourage the growth and development of commercial enterprises in Baltimore City and to lessen the cost of goods therein, beginning with the assessment and levy of City taxes for the year 1921 and thereafter, all merchandise held for sale shall be exempted from taxation for all ordinary municipal purposes."

"To stimulate the erection of buildings and general City development and to encourage home owning it is hereby provided that for the year 1922 no building shall be taxed by the City for ordinary municipal purposes at more than ninety per cent of the regular City rate prevailing in the same taxing district; for the year 1923 no building shall be taxed at more than eighty per cent of the

regular City rate in such district; for the year 1924 no building shall be taxed at more than seventy per cent; for the year 1925 at more than sixty per cent, and for the year 1926 and thereafter no building shall be taxed at more than fifty per cent of the regular City rate prevailing in said district. Any and all portions of this Charter in conflict or inconsistent with this subsection are hereby repealed."

The right to submit the proposed amendment is contested by the appellants on the following grounds, as alleged by them:

1. The Charter of Baltimore City supposed to have been adopted under Article XI-A of the Constitution, known as the Home Rule Amendment, was never validly adopted because;

(a) It was not advertised by the Mayor as requested by said Constitutional Amendment in two newspapers of general circulation published in the City of Baltimore within thirty days after it was reported to him by the Charter Commission. It was advertised in the Daily Record and in the Municipal Journal and the contention of appellants is that neither of these papers was a newspaper of general circulation.

(b) It was not submitted to the voters of said City at the next general or Congressional election after the repeal of said Article XI-A, in that the four new wards added by the Act of 1918 were not included with the rest of the City in the vote on the proposition.

2. Even if the Charter were validly adopted the proposed amendment is beyond the powers of the voters of Baltimore City, contrary to the Constitution and Declaration of Rights, and therefore void.

The first objection was considered and disposed of in the opinion filed at this term in the case of Lucy J. Williams, et al vs. W. F. Broening, Mayor, et al, and it is not necessary to repeat here what was said in that opinion.

There remains for consideration only the second objection.

It will be noted that the proposed amendment to the Charter

undertakes to exempt wholly from taxation for all ordinary municipal purposes all merchandise held for sale, and to partially exempt from such taxation all buildings in Baltimore City.

It is contended by appellees that the full grant of the taxing power was given to Baltimore City by the Act of the Legislature of 1874 Chapter 39, and that under said Act the City acquired all the powers and rights in regard to taxation within its limits that the State itself then had; that the power to tax includes the power to exempt and classify except as modified or restrained by Constitution limitations; that when the people of Maryland on November 2nd 1915 adopted an amendment to Article 15 of the Declaration of Rights they removed the only restriction to the power of the State to exempt and classify property, and that by the Home Rule Amendment to the Constitution the way was cleared for the City to exercise the same unrestricted power.

If it be true as a general proposition that the power to tax in a sovereign State includes the power to exempt and classify (and this is true subject to certain important limitations) it does not follow that this principle is applicable to a municipality which derives its powers only by express grant from the State. Mr. Cooley in his work on Taxation says: "Power of exemption, pertaining as it does to the sovereign power to tax, the municipalities of a State have not the exempting power except as they are expressly authorized by the State. And obviously it is not competent to confer a general power to make exemption, since that would be nothing short of a general power to establish inequality."

1 Cooley on Taxation, pp 344 and 345.

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, - not simply convenient, but indispensable."

Dillon's Municipal Corporations (5 Ed.) Sec. 237.

The real and only question therefore to be decided under the objection we are now considering is, has authority express or necessarily inferable been given to the City of Baltimore either by the Constitution or the laws of this State to make such exemptions as are contemplated by the proposed amendment to its Charter?

Certainly none has been expressly given by any Statute. If it did not exist prior to the adoption of Article XI-A of the Constitution it was not conferred by that Article, because in Section 6 thereof is found this express proviso: "That this Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said Counties or City as this Article sets forth."

And in Section 2 of said Article it is provided:

"Such express powers granted to the Counties and the powers heretofore granted to the City of Baltimore, as set forth in Article 4, Section 6, Public Local Laws of Maryland, shall not be enlarged or extended by any Charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly."

Article 4 Section 6 sub-section 28 confers upon the City the power to levy annually upon the assessable property of the City, by direct tax such sum of money as may be necessary for the support of the City Government, etc., but nowhere in said Article can be found any express authority to exempt property from taxation except in sub-section 28 paragraph C where exemption to encourage manufacturing is authorized. Express authorization in this one instance only emphasizes the general absence of power. Nor is such power necessarily or fairly implied in, or incident to the powers expressly granted, the legislature itself having selected the objects of taxation for State, County and municipal purposes. Public General Laws, Article 81, Section 2.

If there ever was any serious question in the minds of people generally as to the state of the law on this question under

the old Article 15 of the Bill of Rights, it was effectually settled by the decision of this Court in Wells vs. Hyattsville 77 Md. 125.

But it is strongly urged by the appellees that since that case was decided, the people of Maryland in amending Article 15 of the Declaration of Rights have definitely adopted as the policy of the State the scheme of classification of property for taxation purposes, with the local right to exempt special classes from local taxation.

In answer to this contention it is sufficient~~y~~ to say that whatever new powers of taxation may have been given the City by the substitution of the amended Art. 15 for the old, the exercise of such additional power is postponed by the express language of the amendment until after the Legislature has complied with the mandate that the General Assembly shall "by uniform rules provide for separate assessment of land and classification and sub classification of improvements of land and personal property as it may deem proper."

Leser vs Lowenstein, 129 Md. 249.

For the reasons herein expressed the decree of the lower Court was reversed by a per curiam order passed on the 23rd day of October, 1919, and the case remanded in order that an injunction might be granted in accordance with the prayer of the Bill.

Order reversed and case remanded with costs to appellant.

Filed November 21st., 1919.

COURT OF APPEALS OF MARYLAND

October Term, 1919.

Z.Ethel Pope Jones,
 Vs.
 William F.Broening, Mayor of
 Baltimore and The Mayor and City
 Council of Baltimore, a body
 corporate, et al.

Appeal from the Circuit Court of
 Baltimore City.
 1919 October 23rd. Decree reversed &c.,
 as in No. 90.
 Per curiam filed in No.90
 1919 November 21st. Order reversed and
 case remanded, with costs to appellant.
 Opinion filed. Op. Adkins, J.
 Decree filed in No.90 To be reported.

Appellant's Cost in the Court of Appeals of Maryland,

Record	\$ 25.00	
Brief	115.00	
Appearance Fee	10.00	
Clerk	<u>4.05</u>	\$ 154.05

Appellee's Cost in the Court of Appeals of Maryland,

Brief	\$ 15.00	
Appearance Fee	10.00	
Clerk	<u>.70</u>	\$ 25.70

STATE OF MARYLAND, Sct:

I, C. C. Magruder, Clerk of the Court of Appeals of Maryland, to hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this fourth ----- day of December ----- A. D., 1919

C. C. Magruder, Clerk of the Court of Appeals of Maryland.

Lucy J. Williams, et al,
vs
William F. Broening, Mayor,
et al

COURT OF APPEALS

of

MARYLAND

* * * * *

Z. Ethel Pope Jones
vs
William F. Broening, Mayor,
et al

OCTOBER TERM, 1919

Nos. 90 and 91

PER CURIAM; After due consideration the Court has unimously reached the conclusion that each of the proposed amendments to the Charter of the City of Baltimore referred to in the bills of complaint in the above cases, is unauthorized and in excess of the powers conferred by Article XI-A of the Constitution of Maryland, and therefore the Decree in each case must be reversed. An opinion will hereafter be filed giving the reasons for the conclusions reached by us, as above stated, as well as on such of the other questions raised as this Court may deem necessary to determine.

Decree in each case reversed and cause remanded in order that the lower Court shall issue an injunction as prayed in the respective bills of complaint.

A. Hunter Boyd

N. Charles Burke

Wm. H. Thomas

Jno. R. Pattison

Hammond Urner

Henry Stockbridge

W. H. Adkins

October 23rd, 1919

56°

561
a 1919

NO. 91

Jones

vs.

Proving,
et al

MANDATE.

a 9945

L7)

Oct. 24th October 1919

COURT OF APPEALS OF MARYLAND

October Term, 1919

Z. Ethel Pope Jones,

Vs.

William F. Broening, Mayor of
Baltimore and The Mayor and City
Council of Baltimore et al.

Appeal from the Circuit Court of Baltimore
City.

1919 October 23rd. Decree in each case
reversed and cause remanded in order that the
lower Court shall issue an injunction as
prayed in the respective bills of complaint.

Per Curiam filed.

Appellant's Cost in the Court of Appeals of Maryland,

Record \$

Brief

Appearance Fee . .

Clerk

\$

Appellee's Cost in the Court of Appeals of Maryland,

Brief \$

Appearance Fee . .

Clerk

\$

STATE OF MARYLAND, Sct:

I, C. C. Magruder, Clerk of the Court of Appeals of Maryland, to hereby certify that the foregoing is truly
taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal
of the Court of Appeals, this **twenty-third** -----
day of **October** ----- A. D., 1919

C. C. Magruder Clerk
of the Court of Appeals of Maryland.

IN THE CIRCUIT COURT OF ⁵⁶⁰
BALTIMORE CITY. ¹⁹¹⁹

Lucy J. Williams,
et al.

VS.

William F. Broening, Mayor of
Baltimore,
et al.

PLAINTIFFS' EXHIBIT NO. 3.

A9944
(4)

MACHEN & WILLIAMS
ATTORNEYS AND COUNSELLORS AT LAW
1109-1119 CALVERT BUILDING
BALTIMORE

Oct. 9th October 1919

IN THE CIRCUIT COURT OF

BALTIMORE CITY.

560
1919

Lucy J. Williams,
et al.

vs.

William F. Broening, Mayor of
Baltimore,
et al.

666

PLAINTIFFS' EXHIBIT NO. *4*

a 9944
(5)

MACHEN & WILLIAMS
ATTORNEYS AND COUNSELLORS AT LAW
1109-1119 CALVERT BUILDING
BALTIMORE

H. P. October 1919

No. 2

PROPOSED AMENDMENT TO THE CHARTER OF BALTIMORE CITY RELATING TO THE TAXATION OF REAL AND PERSONAL PROPERTY IN THE TERRITORY ANNEXED TO BALTIMORE CITY BY CHAPTER 98 OF THE ACTS OF 1888.

WHEREAS, a petition has been filed with me proposing an amendment to Section 4 of the Charter of Baltimore City relating to the taxation of real and personal property in the territory annexed to Baltimore City by Chapter 98 of the Acts of 1888, which said amendment is as follows:

4. All property, real and personal, situated or held in the territory annexed to Baltimore City by the Act of 1888, Chapter 98, shall be subject to levy, taxation and assessment in the same manner and form, and at the same rate of taxation as property of similar character or description within the limits of said city as they existed prior to the passage of said Act may be subject."

NOW, THEREFORE, I, in pursuance of the direction contained in Section 5 of Article XI-A of the Constitution of Maryland, do hereby publish a full, true and correct copy of the text of said amendment once a week for five successive weeks prior to the election to be held in Baltimore City on November 4th, 1919, at which election the said proposed amendment to the Charter of Baltimore City shall be submitted in form and manner prescribed by law to the legal and qualified voters of Baltimore City for their adoption or rejection.

WM. F. BROENING,
Mayor of Baltimore.

se29-m5t

120
A 1919

March
1919

No. 90

Judy J. Williams.

vs.

Wm. G. Breering,
et al.

MANDATE

A 9944
(12)

Feb. 6th 1919

Court of Appeals of Maryland.October Term 1919.

Lucy J. Williams, et al

vs.

William F. Breening, Mayor, et al

Judge Adkins delivered the opinion of the Court.

This is an appeal from the refusal of the Circuit Court of Baltimore City to enjoin the Mayor and City Council of Baltimore from continuing the publication of an advertisement of a proposed amendment to the Charter of said City relating to the taxation of real and personal property in the territory annexed to Baltimore City by Chapter 98 of the Acts of 1888, and the Supervisors of Election of said City from placing upon the official ballot to be used at the General Election to be held in said City on November 4th, 1919, and from using any public money or funds for defraying the costs of such advertisement or of printing said proposition on the official ballots.

The proposed amendment provides that:

The Charter of Baltimore City shall be amended by repealing all of Section 4 of Article 1 of said Charter and substituting in lieu thereof the following:

4. All property, real and personal, situated or held in the territory annexed to Baltimore City by the Act of 1888, Chapter 98, shall be subject to levy, taxation and assessment in the same manner and form and at the same rate of taxation as property of similar character or description within the limits of said City as they existed prior to the passage of said Act may be subject.

The right to submit the proposed amendment is contested by the appellants on the following grounds, as alleged by them -

1. The Charter of Baltimore City supposed to have been adopted under Article XL-A of the Constitution, known as the Home Rule Amendment, was never validly adopted because:

(A) It was not published by the Mayor as required by Article XI-A in two newspapers of general circulation published in the City of Baltimore within thirty days after it was reported to him by the Charter Commission. It was published in the "Daily Record" and in the "Municipal Journal", and the contention of appellants is that neither of these papers was a newspaper of general circulation.

(B) It was not submitted to the voters of said City at the next general or congressional election after the report of said Charter to the Mayor of Baltimore as required by said Article XI-A, in that the four new wards added by the Act of 1918 were not included with the rest of the City in voting on the proposition.

2. The proposed measure is in excess of the power to amend the Charter conferred by Article XI-A, Section 5, even if the new Charter was validly adopted.

It is manifest if either of these objections was well taken, the injunction should have been granted.

We shall first dispose of the first objection.

Every intendment should be made in favor of the validity of the Charter after the lapse of so long a time since it went into operation.

Until October of the present year no question seems ever to have been raised as to the sufficiency of the publication of the Charter. In the meantime a Mayor and City Council have been elected and we cannot say what complications might arise if the Charter should be stricken down.

We do not regard the provision in the Constitution as to the character of newspapers in which the charter was to be published before submission, so far mandatory in its nature as to render the charter after its adoption subject to attack by reason of a question as to the extent of the circulation of the papers selected by the Mayor as mediums of publication unless it be shown that the failure to comply strictly with the constitutional provision affected the result of the vote on the proposition.

In Carr vs Hyattsville, 115 Md. 545, the statute under consideration was one submitting to the voters of Hyattsville the question whether certain streets should be improved. The statute provided that for the special election to determine said question ballots should be prepared having printed on them "For the Act to improve the Streets" and "Against the Act to Improve the Streets". But the ballots voted at the election had printed on them the words; "For the Road Bill" and "Against the Road Bill". The majority of the ballots cast at the election were marked "For The Road Bill," and after canvassing the vote, the Mayor and Common Council declared the Act to be in full force and effect.

Acting under the power conferred by the Act, the Mayor and Common Council passed an ordinance for the improvement of the road bed of Spencer Street, one of the streets of said Municipal Corporation, and also providing for notice to the owners of abutting property, and for the assessment for the cost of improvements against such property. A tax payer filed a bill to enjoin the Mayor and Common Council from making any assessment against his property for the improvement of said road bed, and from enforcing any assessment against his property for that improvement, on the ground that the Act had never become effective and operative, because the ballots cast at the election were not prepared in strict conformity to the requirements of its provisions. The defendant demurred to the Bill, and the lower Court sustained the demurrer. This Court approved the ruling of the lower Court and in passing on the question at issue said:

"The simple and sole question in the case is this; did the preparation and voting of the ballots in the manner in which they were prepared and voted prevent the Act from becoming a valid and effective law? If so, it can only be because the provisions of the Act relating to the form of the ballot are mandatory and to be strictly observed. We do not think that the form of the ballot as prepared was an essential departure from the require-

ments of the Act, and it would seem to be reasonably certain that the voters understood that they were voting for or against the approval of this particular Act, and did approve it by a majority vote.

The Court ought not to set aside their clearly expressed will, unless required to do so by some imperative rule of law. Mr. McCreary in his work on elections, section 190, says: 'If the statute expressly declares any particular act to be essential to the validity of the election, or that its omission shall render the election void, all Courts whose duty it is to enforce such statute must so hold, whether the particular act in question goes to the merits, or affects the result of the election or not. Such a statute is imperative, and all consideration touching its policy or impolicy must be addressed to the Legislature. But if, as in most cases, that statute simply provides that certain acts or things shall be done within a particular time, or in a particular manner, and does not declare that their performance is essential to the validity of the election, then they will be regarded as mandatory if they do, and directory if they do not, affect the actual merits of the election.' The rule is thus stated in Pain on Elections, section 498: 'In general, those statutory provisions which fix the day and the place of the election and the qualification of the voters are substantial and mandatory, while those which relate to the mode of procedure in the election, and to the record and return of the results are formal and directory. * * * * * The rules prescribed by the law for conducting an election are designed chiefly to afford an opportunity for the free and fair exercise of the elective franchise, to prevent illegal votes, and to ascertain with certainty the result. Generally such rules are directory, and not mandatory, and a departure from the mode prescribed will

not vitiate an election, if the irregularities do not deprive any legal voter of his vote, or admit an illegal vote, or cast an uncertainty on the result, and have not been occasioned by the agency of a party seeking to derive a benefit from them.'

The rule stated by these authors appears to be adopted by the great majority of the Courts in this country, * * *
* * *

The plain purpose of the Legislature was that this act should become effective if approved by a majority of the voters at the special election, and the object of providing the form of ballot was to ascertain the will of the majority of the voters on the question of its approval, and since that majority did approve the act under the form of ballot used, which was substantially, but not strictly, in the words provided in the act, the will of the majority should not be set aside for any of the reasons stated in the bill."

See also the case of Prince George's County vs B & O R R Co. 113 Md. 179, where this Court decided that the provision in Art. 3 Sec. 29 of the Constitution that "the style of all laws of this State shall be, 'Be it enacted by the General Assembly of Maryland'" is directory and not mandatory. In the case at Bar the Charter was published in the Daily Record, which this Court said in Knapp vs Anderson 89 Md. 189, was a daily newspaper, and in the Municipal Journal, in which the Legislature provided by Chapter 477 of the Acts of 1914 municipal advertisements and notices and other legal advertisements and notices might be published in lieu of publication in a daily newspaper, when any law or ordinance required publication in a daily newspaper. Without deciding whether both the Daily Record and the Municipal Journal are newspapers of general circulation within the meaning of the Constitutional provision, we think the recognition above referred to is important as showing the good faith of the Mayor in selecting said papers as mediums of publication of the

Charter. In addition to the notice given by publication in said papers it can fairly be assumed that in a matter of such importance the daily newspapers of Baltimore City editorially and otherwise commented frequently and exhaustively on the provisions of the proposed Charter, and it is fair to assume that the provisions of the Charter were brought to the attention of the voters of said City generally. It was stated in argument and not disputed that the Charter was adopted by a majority of more than twenty-four thousand. In view of the authorities above cited, and taking all the facts of this case into consideration, we are unable to say that the substantial purposes of the constitutional requirements as to publication were not accomplished.

It is significant that while the constitution amendment provides for the publication of the Charter only once in each of two papers, that publication must be far in advance of the submission of the Charter, and a further period of thirty days after the submission is allowed before the Charter becomes operative. From this it is reasonable to infer that the legislature in submitting the amendment and the people in adopting it intended that before any charter should go into effect every one interested should have abundance of time to object to failure to comply with any model regulation as to the submission of the Charter, and that it was not contemplated that failure to comply strictly with model regulations should be made the ground of attack, after the Charter had become operative.

As to the contention that the Charter was not submitted to the voters of the City as required by the Constitution in that the four newly annexed wards were omitted, it is sufficient to say that in our opinion it was submitted to the qualified voters of the City. It is manifest from the examination of the Annexation Act of 1918 that the division of the new wards into election precincts, and provision for registering the residents of said wards who were entitled to registration, were not mandatory until after the Fall election of 1918. As a matter of fact there was no registration of voters in said wards until after the submission, consequently

at that time the residents of those wards were not voters of Baltimore City. We therefore hold that the Charter is not open to attack on this ground.

This brings us to a consideration of the second objection, Viz: That the proposed amendment is in excess of the power to amend the Charter conferred by Article XI-A of the Constitution.

Section 2. of that Article provides that the powers heretofore granted to the City of Baltimore, as set forth in Article 4, Sec. 6, Public Local Laws of Maryland, shall not be enlarged or extended by any Charter formed under the provisions of said Article; and Section 6 of said Article provides that this Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said City.

Now what are the power conferred upon the City by Sec. 6 of Art. 4 (The old Charter) in regard to taxes?

The only parts of said Section which have been bearing upon this controversy are those codified in Code of 1898 as Section 6, sub-section 28-A and 28-B which confer upon the City powers:

"To levy annually upon the assessable property of the City by direct tax with full power to provide by ordinance for collection of the same, such sum of money as may be necessary, in its judgment, for the purpose of defraying the expenses, charges and sums of money which it is, or shall be, required by law to collect for other purposes subject to the provisions and limitations herein contained.", and

"To levy and collect taxes upon every description of property found within the Corporate limits of said City, which it is now authorized by law to levy taxes upon, for the purpose of defraying the expenses of the Municipal Government ... provided further that no authority is given by this Section to impose taxes on any property which is now or may hereafter be exempted from taxation by any general or special Act of the General Assembly of Maryland."

Now if the words "herein contained" are to be construed as meaning "contained in any part of this Article", that settles

the controversy for Section 4 of the Article contains an express inhibition against doing the very thing which the proposed amendment seeks to do, viz: to tax property in the Old Annex, that is the property annexed under the Act of 1888, at the same rate as that at which the property which was within the City limits prior to that date is taxed. This is practically conceded by the appellees. But they contend that the words "herein contained" should have a narrower interpretation and should be construed as referring only to the provisions and limitations contained in Section 6. This would indeed be a narrow construction in view of the fact that these words occur in a Section which is a part of an entire Act passed at one and the same time (Chapter 123 of the Acts of 1898), and not in a Section passed as an addition to a pre-existing act, in which case it might be plausibly argued that the narrow construction was the proper and natural one.

All doubt, however, as to the meaning of these words, according to the Legislative intent, is removed, when exactly the same words are found in another part of the same section in reference to sewers, where they must include provisions in other sections of the Act because the subject matter to which they expressly refer is contained ^{only} in other sections.

A further discussion of the matter is therefore unnecessary.

But before concluding this opinion it may not be amiss to refer to the proviso in Sec. 1 of Art. XI-A of the Constitution that any Charter adopted by the City shall be subject to the Constitution and Public General Laws of the State;

And to the proviso in sub-section 28 B of Sec. 6 of Art. 4 of the Code of Public Local Laws that no authority is given by this section to impose taxes on any property which is now or may hereafter be exempted from taxation by any general or special act of the General Assembly of Maryland;-

And in connection with those provisos to refer to the Annexation Act of 1888 as amended by Act of 1908 Chapter 286, now

codified as Sec. 4 of Art IV of Public Local Laws, which establishes three classes of property in the old annex, rural, suburban and urban and provides for a different rate of tax as to each;

And to the Annexation Act of 1918 Chap. 82 Sec. 10 which after providing for taxing property in the New Annex, goes on to say: "provided that nothing in this Act shall be intended to repeal or affect any law or ordinances now existing or which may hereafter be passed fixing different rates of taxation upon different classes of property, the intent of this provision being that, beginning with the year 1939 and thereafter, there shall be the same rate of taxation throughout the entire limits of Baltimore City upon the same classes of property. It may also be well to refer to the language of Judge Robinson speaking for this Court in the case of Daly vs. Morgan 69 Md. 460 in regard to the good faith of this State being pledged to uphold the arrangement made with the residents of that part of Baltimore County brought into the City under the Old Annex Act of 1888, and to suggest that nothing short of the clearest expression of such intent by the Legislature should be taken as meaning that the Legislature intended to surrender the good faith of the State to the keeping of a subordinate governmental agency whose interest it might be to forget the obligation. For the reasons above expressed a per curiam order was passed on the 23rd day of October, 1919, reversing the decree of the Lower Court and remanding the case in order that a decree might be passed directing the writ of injunction to issue as prayed by the bill filed in this case.

Order reversed and case remanded with costs to appellants.

Filed November 21st., 1919.

Lucy J. Williams, et al,
vs.
William F. Broening, Mayor, et al.

***** *

Z. Ethel Pope Jones

vs.

William F. Broening, Mayor, et al.

Court of Appeals

OF

Maryland.

OCTOBER TERM, ~~190~~ 1919.

Nos. 90 and 91

The Appeal in this case standing ready for hearing, was argued by Counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon, this 21st day of November, 1919, by the Court of Appeals of Maryland, and by the authority thereof, adjudged and ordered ~~that the order~~ and decreed that the decree in each case be reversed, with costs to the appellants; and cause remanded in order that the Lower Court shall issue an injunction as prayed in the Bill of Complaint.

A. Hunter Boyd

N. Charles Burke

Wm. H. Thomas

Jno. R. Pattison

Hammond Urner

Henry Stockbridge, Jr.

W. H. Adkins

Filed November 21st., 1919.

COURT OF APPEALS OF MARYLAND

October Term, 1919

Lucy J. Williams et al,

Vs.

William F; Broening, Mayor of
Baltimore City, and The Mayor and
City Council of Baltimore et al.

Appeal from the Circuit Court of
Baltimore City.

1919 October 23rd. Decree in each
reversed and cause remanded in order that
the lower Court shall issue an injunction

Per curiam filed.

1919 November 21st. Order reversed and case
remanded with costs to appellants.

Opinion filed. Op. Adkins, J.

Decree filed. To be reported.

Appellant's Cost in the Court of Appeals of Maryland,

Record	\$ 50.00	
Briefs	115.00	
Appearance Fee	10.00	
Clerk	<u>5.25</u>	\$ 180.25

Appellee's Cost in the Court of Appeals of Maryland,

Briefs	\$ 110.00	
Appearance Fee	10.00	
Clerk	<u>.70</u>	\$ 120.70

STATE OF MARYLAND, Sct:

I, C. C. Magruder, Clerk of the Court of Appeals of Maryland, to hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this fourth ----- day of December ----- A. D., 1919

C. C. Magruder, Clerk
of the Court of Appeals of Maryland.

121

No 90 a ⁵⁶⁰/₁₉₁₉

Williams et.

vs.

Browning,
et al.

MANDATE

a 9944
(9)

Pa. 24th October 1919

Lucy J. Williams, et al,

vs

William F. Broening, Mayor,
et al

* * * * *

Z. Ethel Pope Jones

vs

William F. Broening, Mayor,
et al

COURT OF APPEALS

of

MARYLAND

OCTOBER TERM, 1919

Nos. 90 and 91

PER CURIAM; After due consideration the Court has unimously reached the conclusion that each of the proposed amendments to the Charter of the City of Baltimore referred to in the bills of complaint in the above cases, is unauthorized and in excess of the powers conferred by Article XI-A of the Constitution of Maryland, and therefore the Decree in each case must be reversed. An opinion will hereafter be filed giving the reasons for the conclusions reached by us, as above stated, as well as on such of the other questions raised as this Court may deem necessary to determine.

Decree in each case reversed and cause remanded in order that the lower Court shall issue an injunction as prayed in the respective bills of complaint.

A. Hunter Boyd

N. Charles Burke

Wm. H. Thomas

Jno. R. Pattison

Hammond Urner

Henry Stockbridge

W. H. Adkins

October 23rd, 1919

COURT OF APPEALS OF MARYLAND

April Term, 1919

Lucy J. Williams et al,

Vs.

William F. Broening, Mayor of
Baltimore City and The Mayor and
City Council of Baltimore et al.

Appeal from the Circuit Court of
Baltimore City.

1919 October 23rd. Decree in each case
reversed and cause remanded in order that the
lower Court shall issue an injunction as
prayed in the respective bills of complaint.

Per Curiam filed.

Appellant's Cost in the Court of Appeals of Maryland,

Record \$
Brief
Appearance Fee . . .
Clerk

\$

Appellee's Cost in the Court of Appeals of Maryland,

Brief \$
Appearance Fee . . .
Clerk

\$

STATE OF MARYLAND, Sct:

I, C. C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly
taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal
of the Court of Appeals, this **twenty-third** -----
day of **October** ----- A. D., 1919

C. C. Magruder, Clerk
of the Court of Appeals of Maryland.

