

JAMES F. DOUTY, JR.,

VS.

MAYOR AND CITY COUNCIL  
OF BALTIMORE, ET AL.

STUART S. JANNEY,  
For Appellant.

A. WALTER KRAUS,  
A. A. DAVIS,  
ROBERT FRANCE,  
For Appellees.

IN THE

## Court of Appeals

OF MARYLAND.

APPEAL FROM  
THE CIRCUIT COURT  
NO. 2 OF  
BALTIMORE CITY.

APPEAL TO THE  
JANUARY TERM, 1928,  
OF THE  
COURT OF APPEALS  
OF MARYLAND.

Filed February 10, 1928.

JAMES F. DOUTY, JR.,  
*Appellant,*

vs.

**MAYOR AND CITY COUNCIL OF  
BALTIMORE, THE BALTI-  
MORE TRUST COMPANY,  
HAMBLETON AND COMPANY,**  
*Appellees.*

IN THE  
*Court of Appeals*  
OF MARYLAND.

\_\_\_\_\_  
JANUARY TERM, 1928.

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GENERAL DOCKET No. 66.

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**BRIEF FOR MAYOR AND CITY COUNCIL  
OF BALTIMORE.**

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This appeal involves the validity of a proposed issue of certificates of indebtedness (hereinafter referred to as bonds) of the Mayor and City Council of Baltimore under authority of Chapter 431, Laws of Maryland, 1927, and Ordinance No. 1051, approved April 13th, 1927 (R. 13).

The matter was heard on a case stated by Circuit Court No. 2 of Baltimore City. That Court held the proposed issue of bonds valid and refused an injunction. This is an appeal from that decree.

The appellant's criticisms of the decree and the legislation authorizing the proposed action of the City are designated in the Record by the small letters of the alphabet, a, b, c, d, e, f (R. 6-7). All of these criticisms, with the exception of the one designated by the letter "e," were more or less before this Court in five previous cases, to wit: Bond vs. Baltimore, 116 Md. 683; Bond vs. Baltimore, 118 Md. 159; Railroad Co. vs. Baltimore, 121 Md. 504; Stanley vs. Baltimore, 146 Md. 277, and the recent case of Thom vs. Baltimore. While the appellant's criti-

cisms, as phrased by him in the Record, were not all specifically discussed by the Court in the previous cases, it must have been apparent from the record in each of those cases that the matters and things which the appellant claims should be done to make the bonds in the case at bar valid, were not done in the five previous cases. If there is any merit in any of the objections of the appellant, it is strange that neither the Court nor counsel in those cases raised them. In the first Bond case, 116 Md. at page 685, the Court said:

“The validity of the ordinance is also assailed upon the same grounds that are made to the Act of the Assembly with the additional objection that the ordinance attempts to create a debt on the part of the Mayor and City Council of Baltimore, which debt has never been authorized by the General Assembly and is in direct violation of Section 7 of Article 11 of the Constitution of Maryland.”

In disposing of this objection, the Court, at page 690, says:

“The Act of the Assembly being valid, the last ground relied upon by the appellant against the ordinance is without merit and need not be considered by us.”

The appellant's objection designated by the letter “e” in the Record is “that the said loan and the terms thereof were not properly and legally submitted to the legal voters of the City of Baltimore and approved by them.” The point of this objection is, we understand, that the Ordinance, not being printed in full upon the ballot, was not submitted to the voters. If this objection is tenable there has never been, since the adoption of the Constitution of 1867, a valid bond issue by the Mayor and City Council of Baltimore.

By reference to pages 21 and 22 of the Record, the Court will see the form of an enabling act and ordinance passed in 1868 under the provisions of Section 7, Article 11 of the Constitution of Maryland. It is interesting to note that six members of the Constitutional Convention of 1867 were in the Senate of 1868, one-fourth of the total membership of that body at that time. Five other members of the Constitutional Convention were members of the House of Delegates in 1868.

It will be seen that the Ordinance in that instance merely provided that the ticket or ballot used by the voter in expressing his approval or disapproval of the Ordinance, have printed on it the words "For the Ordinance" to be used by the voter approving the Ordinance; and the words "Against the Ordinance" to be used by the voter disapproving the Ordinance. This practice was followed for many years, as will be seen by an examination of some of the ordinances passed in the years immediately following the adoption of the Constitution.

See:

Section 11 of Ordinance No. 11 of the Mayor and City Council of Baltimore, approved January 21st, 1870; also:

Ordinance No. 12, approved January 31st, 1870;

Ordinance No. 22, approved March 24th, 1870;

Ordinance No. 89, approved May 23rd, 1876;

Ordinance No. 126, approved June 19th, 1876;

Ordinance No. 131, approved May 26th, 1880;

Ordinance No. 140, approved October 4th, 1880;

Ordinance No. 71, approved May 10th, 1882;

Ordinance No. 120, approved October 19th, 1882.

These Ordinances are before the Court (R. 8-10). Subsequently, it appears to have become the practice to print the title of the ordinance on the ballot. That practice has been followed in recent years.

An examination of the Record, 21 and 22, discloses how short was the enabling Act and how simple the procedure followed shortly after the adoption of the Constitution. Another illustration of how this matter was viewed even down to 1882 is illustrated by Chapter 81, Laws of Maryland, 1882. The statute is short and is as follows:

“Be it enacted by the General Assembly of Maryland, That the Mayor and City Council of Baltimore be and they are hereby authorized and empowered to pass the necessary ordinances and to issue the bonds of said City to an amount not exceeding \$200,000 for the extension of Patterson Park.”

Ordinance No. 120, approved October 19th, 1882, submitted this loan to the voters for approval. Honorable William Pinkney Whyte was Mayor of Baltimore at the time this bond issue was perfected.

There is nothing in the Constitution nor in Chapter 431 of the Acts of 1927 that requires the ordinance to be printed in full upon the ballot. A little reflection will show how impracticable it would be to require the printing of the whole ordinance upon the ballot. Occasionally there are several ordinances submitted at the same election. Ordinance No. 11, approved January 31st, 1870, covers ten printed pages. This Court said that Ordinance No. 379, considered in the Stanley case, was too lengthy for insertion in the opinion. It would be a waste of time and money and serve no good purpose to print

the ordinance in full upon the ballot. The Constitution does not require it. Reason and common sense are against it.

**RATE OF INTEREST NEED NOT BE STATED IN SPECIFIC TERMS  
IN THE STATUTE OR IN THE ORDINANCE.**

Section 3 of the statute enacts that "said certificates of indebtedness when issued shall bear interest at such rate or rates as may be provided for by or under the authority of said ordinances." And the ordinance provides—"said certificates of indebtedness when issued shall bear interest at such rate or rates as may be determined by the Commissioners of Finance at the time any of said certificates are issued."

This statute contemplates that bonds may bear different rates of interest, depending upon the money market at the time they are issued, and authorizes the City under the authority of an ordinance to determine those rates. What better plan could be devised to exercise the authority vested in the City by the statute than by designating the Commissioners of Finance to determine the rate at the time the bonds are to be sold? When the Commissioners of Finance, acting under this authority, have determined the rate, such rate is provided for *under the authority of said ordinance*.

The statute and ordinance in the case at bar specify the interest rate in general terms—the statute by providing that the bonds shall bear interest at such rate or rates as may be prescribed by or *under the authority of an ordinance*—the ordinance by specifying the rate shall be such as may be determined by the Commissioners of Finance at the time the bonds are issued. The power of the City to delegate to the Commissioners of Finance the

authority of fixing the rate was upheld in *Bond vs. Baltimore*, 118 Md. 159.

It is true there is a slight difference in the language of the statute and ordinance involved in *Bond vs. Baltimore*, 118 Md. 159, and in the statute and ordinance in the case at bar. In the *Bond* case, the statute provided that the stock should be payable at such times and to bear such rate or rates of interest as the Mayor and City Council of Baltimore shall by ordinance provide; said amounts of stock shall be sold and issued by the Commissioners of Finance of the City of Baltimore, at the best prices obtainable in their judgment therefor. The ordinance in the *Bond* case, *supra*, provided that said stock shall bear "interest at the rate of not more than four per centum per annum, as may be determined by the Commissioners of Finance of Baltimore City." In referring to this statute, this Court said:

"It is true, the statute says, 'said stock to be issued from time to time and in such amounts as the Mayor and City Council of Baltimore shall *by ordinance prescribe*' and yet in the ordinance the specific time at which the stock shall be issued and the amounts thereof are not stated, nevertheless it provides that said stock shall be sold from time to time and at such times as shall be requisite, such times being, as provided by the statute, 'when and as portions of the work are being done' and when the money is required to meet the cost and expense of such work; and the amount of stock to be issued at such times is the amount of stock required to meet such payments. \* \* \* The times when and the amounts of stock to be issued under the ordinance do not vary from those prescribed by the statute, but the provisions of the ordinance are in harmony with the statute.

The power or discretion delegated to the Commissioners of Finance to issue the stock from time to time and at such times as shall be requisite is not, we think, an unlawful delegation of power or discretion, when by the statute it is to be issued and sold by them when and as portions of the work are being done and as we may add, when the money is required with which to pay for such work done by and upon the authority of the Paving Commission.

As said above, the statute also provides that the stock shall bear 'such rate or rates of interest as the Mayor and City Council shall by ordinance prescribe.' The ordinance provides that said stock shall be issued in sums of not less than one hundred dollars each, redeemable on the first day of October, 1951, and bearing interest at the rate of not more than four per centum per annum. While it does not fix the rate of interest to be paid upon the stock, it limits such rate to four per centum per annum, and the Finance Commission, in whom is vested the right to sell said stock at the best prices obtainable in their judgment, in establishing the rate of interest, is restricted to a rate not in excess of four per centum. We do not think the delegation of this restricted discretion here given to the Finance Commission in fixing a lower rate of interest, is unlawful, and specially so when considered in connection with the power vested in them by the Act to sell said stock and at the best prices obtainable in their judgment.

It may also be said that the delegation of the power and discretion here complained of will be found in the Burnt District Loan, the Annex Paving Loan, the Sewerage Loan and other similar ordinances."

Ordinance No. 234, approved September 9th, 1924, under authority of which \$7,000,000.00 was authorized in pursuance of Chapter 220, Laws of Maryland 1924, contained this language:

‘Said certificates of indebtednes when issued shall bear interest at such rate or rates as may be determined by the Commissioners of Finance at the time when any of said certificates are issued.’

Similar language occurs in other ordinances under which City bonds were issued, and this language, it will be seen, is the same as that contained in the ordinance involved in the case at bar. These bonds amounting to \$19,598,000.00 were approved by lawyers familiar with this class of securities for the various purchasers of said bonds. Said bonds are now outstanding. To hold the present ordinance invalid will have the effect of injuring the credit of the City and create uneasiness in the minds of its bondholders. Such a narrow and technical construction of the legislation involved is not demanded by any consideration of public policy or by judicial authority.

It is true the statute involved in *Bond vs. Mayor and City Council of Baltimore*, 118 Md. 159, provides said stock shall be sold and issued by the Commissioners of Finance of the City at the best prices obtainable in their judgment. Some other statutes authorizing loans by the City do not contain such language. Nevertheless, bonds issued thereunder have been sold and are outstanding.

This Court in *Bond vs. Baltimore*, 118 Md. at page 171, said:

“It may also be said that the delegation of the power and discretion here complained of will be found in the *Burnt District Loan*, the *Annex Paving Loan*, the *Sewerage Loan* and other similar ordinances.”

It seems from this the Court in the Bond case give some weight to the practice under, and construction of, previous legislation.

In neither the Annex Paving Loan Act (Chapter 274, Acts of 1904) nor in the Burnt District Loan Act (Chapter 468, Acts of 1904) both of which statutes are referred to by the Court in the Bond decision, is *there any reference to the Commissioners of Finance*. Ordinance No. 216, approved March 6th, 1905, submitted the New Paving Loan to the voters, while Ordinance No. 271, approved April 22nd, 1904, submitted to the voters the Burnt District Loan. In each of these ordinances it is provided that the bonds shall bear interest at a rate of not more than four per cent. per annum as may be determined by the Commissioners of Finance of Baltimore City.

Thus it appears that the decision in *Bond vs. Baltimore*, 118 Md. 171, does not rest upon the fact that the statute involved in that case directed the Commissioners of Finance to issue and sell said stock at the best prices obtainable in their judgment.

Chapter 110, Acts of 1910, page 640, and Ordinance No. 555, approved June 13, 1910, authorizing the City to issue bonds were before this Court in *Railroad Co. vs. Baltimore*, 121 Md. 504.

That statute enacted that the bonds should bear such rate of interest as the City may by ordinance provide. It did *not mention the Commissioners of Finance*, yet the ordinance provided that the rate should be not more than four per cent. per annum, as *may be determined by the Commissioners of Finance of Baltimore City* and

contained the provision calling for the usual procedure of submitting the ordinance to the voters.

The Court, at page 506, referred to the approval by the voters as having been given "in the manner contemplated by the Act and by Section 7 of Article 11 of the Constitution of the State."

Chapter 92, Laws of Maryland 1910, authorizes the Mayor and City Council of Baltimore to issue its stock to an amount not exceeding \$1,500,000.00—

"said stock to be issued from time to time as the Mayor and City Council of Baltimore shall by ordinance provide; and to be issued for such amounts and to be payable at such time and to bear such rate of interest as the Mayor and City Council of Baltimore shall by ordinance provide."

The ordinance submitting that loan to the people is No. 556, approved June 13th, 1910. Section 2 of that ordinance provides:

"That said stock shall be issued in sums of not less than \$100.00 each, redeemable on the first day of March in the year 1861, and bearing interest at the rate of not more than four per centum per annum, as may be determined by the Commissioners of Finance of Baltimore City."

When that loan was being passed upon by the attorney for the purchaser, Mr. S. S. Field was City Solicitor of Baltimore. In a letter dated September 9th, 1913, to the attorney, he said:

"The point raised by you—that inasmuch as Chapter 92 of the Acts of 1910 provides that the rate of interest and the times of issue of the stock should be provided by ordinance, the ordinance could not dele-

gate its power on these points to the Commissioners of Finance—was passed upon by our Court of Appeals in upholding the validity of a similar ordinance for the issuance of stock for paving purposes in the case of Bond vs. Mayor and City Council of Baltimore, et al., 118 Md. 159.”

And again under date of September 23rd, 1913, writing to the same attorney, Mr. Field said:

“Ever since the passage of the New Charter it has been the invariable practice in all the loans which have been issued by the City, and there have been loans issued aggregating more than fifty million dollars, to delegate these particular duties to the Commissioners of Finance in the identical terms of the ordinance which you have under consideration.

I have not the slightest doubt that our Court of Appeals would say without any hesitation that the Act of 1910, Chapter 92, was passed with a knowledge of the unbroken custom to delegate such duties to the Commissioners of Finance; that it should be construed in conformity to the previous legislation, both statutory and by ordinance, on similar subjects; and that when it authorized the city, in very brief terms, to issue a new School House Loan it necessarily intended that it should be issued in the same way that numerous previous loans had been issued, there being no specific provisions in the Act to the contrary.

I do not think that the fact that the Paving Loan Act specifically referred to the Commissioners of Finance, and that the Act of 1910, Chapter 92, does not, would have made any difference in the decision in the case of Bond vs. The Mayor and City Council of Baltimore.

While, therefore, it is true, as a general proposition, that a specific power to a city to be exercised by ordinance must be exercised by ordinance, yet

there are in very many cases details of the exercise of the power which the ordinance commits to some department or official, and the committing of the particular details in question to the Commissioners of Finance of Baltimore City is sanctioned by unbroken usage in our city for fifteen years and by the decision of the Court in the case above referred to."

Vol. 20, Opinions of City Solicitor, page 5716.

In *Baltimore vs. Howard*, 6 H. & J. 316, it was held that the possession of a power by the Mayor and City Council of Baltimore to do an act is of itself a possession of the right to provide for the doing of that act by agents.

It is respectfully submitted that there is nothing in the actual decision in the *Stanley* case, 146 Md. 277, or in the actual decision in the recent *Thom* case which requires the decree in this case to be reversed. (It may be remarked that the City is filing a petition for re-argument in the *Thom* case). While we consider some of the language used in the majority opinion in the *Thom* case, unfortunate and calculated to injure the credit of the City, we do not believe the Court in either of those cases intends to convey the meaning contended for by the appellant in the case at bar.

The question involved in the *Stanley* case, as shown by the majority and minority opinions in that case, and by the briefs of counsel engaged therein, was whether the Legislature had granted the City authority to change the rate of interest specified in an ordinance, submitting to the voters of Baltimore City for their approval or rejection a proposed issue of bonds.

After that decision, holding that the Legislature had not granted such authority to the City, the Legislature passed an Act granting such power to the City.

The question decided in the Thom case is that the City, acting under the power contained in that statute, cannot validly change the rate of interest specified in an ordinance submitting to the legal voters of the City for their approval or rejection a proposed bond issue.

We feel it our duty to request this Court to grant a re-argument in the Thom case and change or modify some of the language in that opinion, and are preparing to file a petition asking for a re-argument of that case and assigning our reasons therefor in accordance with the rules of this Court. If the Court has any doubt that the decree in the present case should be affirmed, we respectfully request that it do not decide this case until a re-argument is had in the Thom case and we have had an opportunity to brief it fully.

Relying upon the validity of the enabling statutes, the City has outstanding many million dollars of bonds (R. 10).

Let the validity of any of the City's outstanding obligations be questioned, and immediately there spreads a fear that perhaps all of its outstanding obligations are of doubtful legality. If, for instance, some taxpayer, relying upon the language of the majority opinion in the Thom case, should file a bill to enjoin the City from paying interest and principal as they fall due on any of its outstanding bonds, the holders of all the City's obligations would become apprehensive. Owners of other issues of City stock would begin to ask questions and

make inquiries. Neither investment brokers nor lawyers could safely advise as to the legality of an outstanding or a proposed issue until this Court has passed upon it. It does not take a prophet to see what effect such litigation or apprehension will have upon the City's credit or upon the sale of its securities.

As stated before, we do not believe that this Court intends that its language in the Thom case shall be given the construction contended for by the appellant herein, but the mere fact that it is susceptible to such hurtful interpretation makes us apprehensive.

We invite especial attention to the words of Judge Offutt in delivering the majority opinion in the Thom case to the effect that Article 11, Section 7 of the Constitution of Maryland

“should be so interpreted as to allow the municipal authorities the widest measure of freedom necessary to the efficient discharge of their duties”

and that

“it is reasonable and necesary that the municipality should have some freedom of choice and change in fixing the interest rates which it will pay for money, and such a privilege may indeed be essential in marketing its securities to the best advantage.”

We also invite especial attention to the statement in the opinion that undoubtedly the weight of authority in such cases is that the word “debt” as used in Constitutions does not include interest.

We also invite especial attention to the opinion of the Supreme Court of Georgia in Epping vs. City of Columbus, 43 S. E. 803, 10 Municipal Corporation Cases 1, and

the authorities there cited. Also, to the language of this Court in *Baltimore vs. Gill*, 31 Md. 390:

“That the Constitution is not to have a narrow or technical construction; but must be understood and enforced according to the plain and common sense meaning of its terms.”

Also, to the language of this Court in *Manly vs. State*, 7 Md. 135-147, where, in speaking of the Constitution, the Court said:

“Its terms must be taken in their ordinary and common acceptation, because they are presumed to have been so understood by the framers and by the people who adopted it. This is unquestionably the correct rule of interpretation. It, unlike the Acts of our legislature, owes its whole force and authority to its ratification by the people, and they judged of it by the meaning apparent on its face, according to the general use of the words employed, where they do not appear to have been used in a legal or technical sense.”

And again, to the words of this Court in *State vs. Mayhew*, 2 Gill 497, where it is said:

“A cotemporaneous construction of the Constitution of such duration, continually practised under, and through which, innumerable rights of property have been acquired, ought not to be shaken, but upon the ground of manifest error and cogent necessity.”

In view of the fact that the Constitution has been in force for more than sixty years and during all that time the word “debt” as used in Article 11, Section 7, has been construed to mean principal only by the City and by the legislative department of the State, it is respectfully submitted that it is so understood by the people of

the State. As was said by the Supreme Court of Georgia in the Epping case, supra, laws have been passed by the General Assembly from time to time during this entire period authorizing the City to issue bonds in such amounts as that the issue would be unlawful if interest thereon was counted as a part of the debt. Said the Court:

“The law deals at all points with the man of ordinary prudence and average capacity as the standard, for the simple reason that communities and commonwealths are made up of persons of this class. Constitutions are adopted by commonwealths so made up, and the meaning to be given to such instruments is that meaning which the man of ordinary prudence and average intelligence and information would give. Generally the meaning given to words by the learned and technical is not to be given to words appearing in a Constitution. In other words, the popular meaning is to be given to the words of a Constitution, unless the context or the instrument, taken as a whole, imperatively requires some other meaning.”

The decree should be affirmed.

Respectfully submitted,

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City Solicitor,

ALLEN A. DAVIS,

Assistant City Solicitor,

Attorneys for Mayor and City  
Council of Baltimore.

JAMES F. DOUTY, JR.,  
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MAYOR AND CITY COUNCIL OF  
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IN THE  
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JANUARY TERM, 1928.

GENERAL DOCKET No. 66.

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**BRIEF FOR APPELLANT.**

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**STATEMENT.**

This case was instituted to determine the legality of the proposed issue by the Mayor and City Council of Baltimore of one million five hundred thousand dollars (\$1,500,000) Airport Serial 1933-67 Loan, under authority of Chapter 431 of the Acts of the General Assembly of Maryland of 1927, approved April 5, 1927, and under the further authority of Ordinance No. 1057 of the Mayor and City Council of Baltimore, approved April 13, 1927. The Ordinance referred to was duly published as required by the Ordinance, and was submitted to the voters of Baltimore as set forth in the agreed statement at the municipal election held on the third day of May, 1927, whereat the Ordinance was approved by the voters.

**THE ACT OF ASSEMBLY.**

Chapter 431 of the Acts of the General Assembly provides in Section 1 thereof as follows:

*“Be it enacted by the General Assembly of Maryland, That the Mayor and City Council of Baltimore*

be and it is hereby authorized to issue the Certificates of Indebtedness of said corporation to an amount not exceeding one million five hundred thousand dollars (\$1,500,000), said Certificates of Indebtedness to be issued from time to time, and for such amounts, payable at such periods *and bear such rate of interest, all as the Mayor and City Council of Baltimore shall by Ordinance from time to time provide*, but no stock or bonds shall be issued in whole or in part unless the Ordinance of the Mayor and City Council of Baltimore providing for the issuance thereof shall be submitted to the legal voters of Baltimore City, etc.”

It is to be observed that the above section provides that the rate of interest shall be fixed by Ordinance. Section 3 of the same Act contains the following provision:

“Said Certificates of Indebtedness when issued shall bear interest at such rate or rates as may be provided by or *under the authority of* said Ordinance.”

It is to be observed that Section 3 makes apparent provision for the delegation by the Ordinance of the fixing of the interest rate, whereas Section 1 provides that the interest rate shall be fixed by the Ordinance. This apparent conflict is probably due to error of the draftsman in not eliminating the provision with respect to interest from Section 1.

#### **THE ORDINANCE.**

Ordinance No. 1057, passed pursuant to the provisions of the above cited Act, after referring to the Act and to the need by the City of the property referred to, authorizes the issuance of the Certificate of Indebtedness, fixes the denominations thereof and the dates of their redemption, and then provides in the second paragraph of Section 2:

“Said Certificates of Indebtedness when issued shall bear interest at such rate or rates as may be determined by the Commissioners of Finance at the time any of said Certificates are issued, the interest to be payable semi-annually on the first day of April and the first day of October in each year during the respective periods that the series in which said Certificates are issued may run.”

The Ordinance then authorizes the levying of the taxes, requisite to take care of the principal, interest and sinking fund, and provides for the publication of the Ordinance in two daily newspapers published in Baltimore City.

#### **THE VOTE OF THE PEOPLE.**

Pursuant to the terms of the Ordinance, the complete Ordinance was published in the Baltimore “Sun” and the Baltimore “Daily Record” four times, to wit, on April 15, 16, 19 and 21st, 1927, being four days in each of said papers. The title of the Ordinance was then placed on the ballot in the way indicated in the Agreed Statement of Facts, at the municipal election held on May 3rd, 1927, and the Ordinance received a majority of the votes cast on this question at the election. It is to be observed that the title of the Ordinance in no way refers to the question of interest.

#### **ARGUMENT.**

It has been decided in the *Stanley* case and in the *Thom* case, that where an ordinance fixing the rate of interest to be borne by Baltimore City Bonds or Certificates of Indebtedness has once been submitted to the people, the rate of interest cannot thereafter be changed with or

without statutory authority for such change, and the reasoning of the Court in the *Thom* case was based on the general proposition that the word "debt" as used in Article 11, Section 7 of the Constitution of Maryland, required the ordinance to fix the rate of interest to be borne by the loan, and the ordinance thus fixing the rate of interest to be submitted to the people at the specified election.

In the present case, neither the Act of Assembly nor the ordinance fixes the rate of interest, nor was the rate of interest fixed in advance of the election, but the ordinance attempted to delegate the duty of fixing the interest to the Board of Finance Commissioners of Baltimore City, and these acted thereupon by resolution, fixing the interest at four per cent. (4%) on December 29th, 1927, nearly eight months after the election.

The questions presented for the decision of the Court are:

- (1) Whether the Act of Assembly and ordinance should fix or limit the interest rate the proposed loan is to carry;
- (2) Whether the ordinance must fix or limit the interest rate the loan is to carry;
- (3) Whether the failure to fix the interest rate before submission to the people invalidates the loan;
- (4) Whether the ordinance was in this case properly submitted to the people by title as printed on the ballot.

## POINT I.

**BOTH THE ACT OF ASSEMBLY AND THE ORDINANCE AUTHORIZING THE LOAN SHOULD FIX OR LIMIT THE RATE OF INTEREST.**

In the *Thom* case, this Court decided that even with legislative authority, the City could not by ordinance lower the rate of interest fixed by a previous ordinance which had been submitted to the public, and the Court in so deciding based its decision on the general proposition that the word "debt," as used in Article 11, Section 7 of the Constitution of the State, includes both the principal and interest of any loan to be made by the City, then the Court stated:

"and in respect to that question it was said in *Stanley vs. Baltimore*, 'the City assumed to pay the interest and the faith and credit of the City are pledged not only for the security of the principal, but also of the interest, which was an integral part of the debt.' Certainly, if as stated in that case, the interest is an 'integral part of the debt,' it is difficult to see how in the face of the constitutional guaranty the Legislature can, itself or by a delegate, change the rate of interest specified in the ratifying ordinance, without changing the amount of the debt, or without authorizing a different debt from that approved by the voters, and unless we are to overrule that case, we must hold Ordinance No. 104 invalid."

Eliminating unnecessary words, Article 11, Section 7 of the Constitution, provides:

"No debt shall be created by the Mayor and City Council of Baltimore \* \* \* unless such debt \* \* \* be authorized by an Act of the General Assembly, and by an ordinance of the Mayor and City Council of Baltimore, submitted to the legal voters of the City \* \* \* and approved by a majority of the votes cast at such time and place."

If, therefore, the word "debt," as used in this provision, includes interest, the Constitutional Mandate requires that such debts, i. e., both principal and interest be authorized both "by an Act of the General Assembly and by an ordinance of the Mayor and City Council of Baltimore, submitted to the legal voters of the City."

In as much as in this instance the full extent of the debt, that is, both principal and interest, were not fixed by the Act and were not fixed by the ordinance, and were not in consequence submitted to the legal voters of the City, the loan at least on the terms proposed to be issued is invalid and should be enjoined.

#### **POINT II.**

##### **THE ORDINANCE MUST FIX OR LIMIT THE INTEREST RATE.**

Chapter 431 of the Act of the General Assembly, purporting to authorize this loan, contains two provisions with respect to interest rate. In Section 1, it expressly provides that the loan "shall bear such rate of interest as the Mayor and City Council of Baltimore shall by ordinance from time to time provide." In Section 3 of the Act it is provided that the loan "shall bear interest at such rates or rates as may be provided by or under the authority of said ordinance."

Even of the Court shall feel, contrary to the argument made under Point I, that the Act may leave to the Mayor and City Council of Baltimore the fixing of the interest to be borne by the loan, there is in the two provisions above quoted an ambiguity as to how this interest should be fixed. But assuming for the purpose of argument that the provision in Section 1 of the Act was an inadvertence and is overruled or at least amended by the provisions

of Section 3, we have presented the very obvious difficulty whether the Legislature can authorize, in view of the constitutional provision, the Mayor and City Council of Baltimore by ordinance to delegate to the Board of Finance Commissioners or to any other branch of the City government the duty of fixing the interest, particularly when the result of that delegation is, as in this instance, that there is never submitted to the people the right to vote upon the whole debt, considering as this Court has just decided, that the rate of interest cannot be changed without changing the amount of the debt.

Indeed, it is clear that both the principal of a proposed loan and the interest to be borne by the loan vitally affect the taxpayers' interest, from which it would seem to be clear that if the matter is to be submitted to the people at all, the people should have an opportunity of passing on both of these two vital factors in the loan, having a particular bearing on the tax rate. In the present instance, on account of the fact that the ordinance purported to delegate to the Board of Finance Commissioners the fixing of the interest, no limitation whatsoever was imposed with respect to the rate of interest that the loan would carry when the same was submitted to the people.

In the case of *Bond vs. Mayor & City Council of Baltimore*, 118 Md. 159-170, the Act of the Legislature provided substantially as does the first section of Chapter 431, that the loan should bear "such rate or rates of interest as the Mayor and City Council shall by ordinance prescribe." The ordinance in that case prescribed that the loan should bear interest "at the rate of not more than four per centum (4%) per annum." The Court evidently had some difficulty in upholding the validity of this

ordinance so limiting the interest rate, finally concluding however as follows:

“We do not think the delegation of the restricted discretion here given to the Finance Commission in fixing a lower rate of interest is unlawful, and especially so when considered in connection with the power vested in them by the Act to sell said stock and at the best prices obtainable in their judgment.”

It is obvious that the Court had some difficulty in upholding the delegation of this very restricted authority to the Board of Finance Commissioners. In the present case, the ordinance fixes no limit whatsoever upon the interest rate, so that after the people voted, the rate might have been fixed at 2% or at 10%. It is respectfully suggested that the people did not, therefore, have presented to them the debt, did not authorize the debt, and the loan has, therefore, no legal authority.

### POINT III

#### INTEREST RATE NOT HAVING BEEN FIXED BEFORE SUBMISSION TO THE PEOPLE, THE LOAN IS INVALID.

Even if the Court should feel that it is constitutionally competent for the Legislature, by Act, to authorize the loan without fixing the rate of interest; and for the ordinance to delegate the fixing of the rate of interest to the Board of Finance Commissioners, nevertheless it being established by this Court in the *Thom* case that the word “debt” as used in the Constitution, includes interest, the Board of Finance Commissioners should at least have fixed the rate of interest prior to the election so that rate might be submitted to the people along with the other details of the debt as fixed by the ordinance. In the present instance, the Board of Finance Commission-

ers fixed the rate of interest eight months after the election.

A number of enabling acts and ordinances making provision for city loans are referred to in the Record. So far as we have been able to ascertain, it was not until the loans of 1924 that the effort was made to eliminate the interest rate from consideration by the people. Even in the ordinance of 1868 printed in full in the Record, the interest rate is specified at 6% and in all others except those of 1924, it is either specified or limited.

In the *Stanley* case, this Court considered thirty-two enabling acts, in all of which cases the interest rate was fixed either in the act or in the ordinance (146 Md. 293).

So that the delegation of the unrestricted right to fix the interest rate to the Finance Commissioners to take action after the submission of the loan to the people is of recent origin, and there is no course of dealing which may in any way be considered as contemporaneous interpretation.

The fact that some city stock is outstanding under these Acts of 1924 cannot of course change the requirements of the Constitution for the authorization of a debt.

#### POINT IV.

##### THE ORDINANCE WAS NOT SUBMITTED TO THE PEOPLE IN CONFORMITY WITH THE ACT OF THE ASSEMBLY.

Passing for the moment the question of the illegality raised in the first three points above discussed, we find that Chapter 431, in purporting to authorize this loan, provides as follows:

“But no stock or bonds shall be issued in whole or in part unless the ordinance of the Mayor and City Council of Baltimore, providing for the issuance thereof, shall be submitted to the legal voters of Baltimore City at such time and place as may be fixed by said ordinance, and be approved by a majority of the votes cast at such time and place as required by Section 7 of Article 11 of the Constitution of Maryland.”

The Act of Assembly thus requires that the ordinance be submitted to the voters. This Court in the *Stanley* case, 146 Md. 277, 292, states:

“From the ordinary meaning and grammatical construction of the language of this Statute, it clearly and necessarily follows, that whatever its draft and its form, the whole ordinance as enacted must be submitted for the ratification or rejection of the electorate of the City.”

Ordinance No. 1057 fixed in Section 1 the amount of the loan, the use of the proceeds, and provided in terms that “this ordinance shall not go into effect unless it shall be approved by the majority of the votes of the legal voters of the City of Baltimore, cast at the time and place hereinafter designated by this ordinance.” The ordinance then provided for the various series in which the Certificates of Indebtedness were to be issued, with the dates of maturity of each series, and further provided that the Certificates of Indebtedness “shall bear interest at such rate or rates as may be determined by the Commissioners of Finance at the time when any of said Certificates are issued.” The ordinance then provided for the Certificates to bear coupons, representing the interest, and ordained that sufficient sums to meet the principal and interest of the indebtedness, as well as the current maturing series be collected by taxation.

When the ordinance came to be submitted to the people, merely the title was printed upon the ballot with the blank spaces provided for the voter to vote for the ordinance or against the ordinance, but the ordinance was not printed upon the ballot and was not, therefore, submitted to the people.

In this case, it may be observed that the title itself not only bore no indication of the rate of interest the loan was to carry, nor the dates of maturity of the various series of the loan, but did not even designate that the rate of interest was to be left to the uncontrolled and unlimited discretion of the Board of Finance Commissioners of the City. It is submitted that this does not constitute a submission of the ordinance to the voter.

It is true that the ordinance was published in full in both The Daily Record and in The Sun, twice a week for two successive weeks prior to the election, but we are considering here constitutional and statutory mandates that the ordinance shall be submitted, and it is more than doubtful whether the voters saw or could be expected to see and read ordinances published at various times in the advertising columns in newspapers.

Respectfully submitted,

STUART S. JANNEY,

FRANK B. OBER,

Solicitor for Appellant.

JAMES F. DOUTY, JR.,  
*Appellant,*

vs.

MAYOR AND CITY COUNCIL OF  
BALTIMORE, THE BALTI-  
MORE TRUST COMPANY,  
HAMBLETON AND COMPANY,  
*Appellees.*

IN THE  
*Court of Appeals*  
OF MARYLAND.

\_\_\_\_\_  
JANUARY TERM, 1928.

\_\_\_\_\_  
GENERAL DOCKET No. 66.

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**BRIEF FOR THE BALTIMORE TRUST COMPANY  
AND HAMBLETON AND COMPANY, TWO  
OF THE APPELLEES.**

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**Statement.**

These appellees are jointly interested in the subject matter of this case as the joint purchasers of the Baltimore City Stock, the legality of which is questioned therein.

If this Court shall decide that the proposed issue of said stock is legal and that the validity of such stock when issued will not be impaired by the objections raised by the plaintiffs or appellant in this case, then it is ready and willing to consummate its purchase of said stock. If, on the other hand, it should be decided that the proposed issue of said stock is illegal, and that such objections are well founded, then it would desire to be relieved of such purchase.

The legal questions involved will be fully argued by the other parties, appellant and appellee, and these appellees therefore file only this statement of their position in lieu of any fuller brief, and submit the questions raised by the Record to the determination of this Honorable Court.

ROBERT FRANCE,

Solicitor for The Baltimore  
Trust Company and Ham-  
bleton & Company,

Appellees.

**TRANSCRIPT OF RECORD**

**FROM THE**

**CIRCUIT COURT NO. 2 OF BALTIMORE CITY**

**IN THE CASE OF**

**JAMES F. DOUTY, JR.,**

**VS.**

**MAYOR AND CITY COUNCIL OF BALTI-  
MORE ET AL.,**

**TO THE**

**COURT OF APPEALS OF MARYLAND.**

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**STUART S. JANNEY,**

**For Appellant.**

**A. WALTER KRAUS,**

**A. A. DAVIS,**

**ROBERT FRANCE,**

**For Appellees.**

## DOCKET ENTRIES.

Stuart S. Janney	<i>James F. Douty, Jr.</i>
	No. 16029 A.
A. Walter Kraus	<i>Mayor and City Council of</i>
A. A. Davis	<i>Baltimore.</i>
Robert France	<i>The Baltimore Trust Com-</i>
	<i>pany.</i>
Do	<i>Hambleton and Company.</i>

10th February, 1928—Bill of Complaint Special Case Stated, Rider Amended (1) and Exhibit Circular (4), Exhibit Bid (5), Exhibit Ordinance (3), and Exhibit Act of Assembly (2) fd.

10th February, 1928—Decree (6) fd.

10th February, 1928—Appeal prayed to the Court of Appeals of Maryland (7) fd.

## SPECIAL CASE STATED.

(Filed February 10, 1928.)

*In the Circuit Court No. 2 of Baltimore City.*

*James F. Douty, Jr., Plaintiff.*

*vs.*

*Mayor and City Council of Baltimore, The Baltimore Trust Company, Hambleton & Company, Defendants.*

**SPECIAL CASE STATED FOR THE DETERMINATION OF THE COURT UNDER CODE OF 1924, ARTICLE 16, SECTION 221, &c.; IN THE NATURE OF A TAXPAYERS' BILL TO ENJOIN ISSUE OF CITY STOCK.**

1. The plaintiff is a citizen and resident of Baltimore City and is assessed for real and personal property therein in a substantial amount, on which assessment he pays taxes to the State of Maryland and to Baltimore City, and as such he is interested in the determination of the questions hereby submitted for the determination of this Court.

2. The defendant, the Mayor and City Council of Baltimore, is a municipal corporation existing under the Constitution and Statutes of the State of Maryland; the defendants, The Baltimore Trust Company and Hambleton & Company, are corporations duly created and existing under the laws of the State of Maryland, with full power and authority to purchase and deal in certificates of indebtedness of the City of Baltimore, and are engaged in business in Baltimore City and elsewhere.

3. The General Assembly of Maryland at the Session of the year 1927, duly enacted an Act, known as Chapter 431 of the Acts of 1927, Approved April 5, 1927, authorizing the Mayor and City Council of Baltimore to issue the Certificates of Indebtedness of said corporation, to an amount not exceeding one million five hundred thousand dollars (\$1,500,000) for the purposes expressed in said Act, and a copy of the aforesaid Act is filed herewith marked "Exhibit Act of Assembly" and is made a part hereof.

4. Thereafter, the Mayor and City Council of Baltimore enacted an Ordinance known as Ordinance No. 1057 of the Ordinances for the year 1927, and approved by the Mayor of the City of Baltimore on April 13, 1927, for the purpose of further authorizing the issuance of the Certificates of Indebtedness referred to in Chapter 431 in the Acts of Assembly of 1927, and a copy of said Ordinance is made a part hereof, marked "Exhibit Ordinance."

5. The said Ordinance was published in two daily newspapers printed and published in the City of Balti-

more on April 15, 16, 19 and 21, being twice a week for two weeks prior to said election.

6. Thereafter, at the municipal election held in Baltimore City on the first Tuesday after the first Monday in May, 1927, being the 3rd day of May, 1927, the official ballot contained the following provision:

**AIR PORT LOAN**

**ORDINANCE NO. 1057, APPROVED APRIL 13 1927**

An ordinance to authorize the Mayor and City Council of Baltimore (pursuant to Chapter 431 of the Acts of the General Assembly of Maryland of 1927) to issue its Certificates of Indebtedness to an amount not exceeding one million, five hundred thousand dollars (\$1,500,000) for the acquisition by purchase or condemnation of land and/or improvements on land, for the purpose of establishing and maintaining for public purposes an air port in the City of Baltimore to thereby afford suitable landing facilities for accommodating land and sea planes.

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**FOR ORDINANCE**

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**AGAINST ORDINANCE**

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7. At the municipal election aforesaid, 66,445 votes were cast for said Ordinance and 22,665 votes were cast against said Ordinance.

8. That thereafter, to wit: on December 29, 1927, there was a meeting of the Board of Commissioners of Finance of Baltimore City, at which all of the members were present and the following resolution was adopted:

“RESOLVED that the Mayor and City Council of Baltimore be and it is hereby authorized to issue \$1,500,000 Airport Serial 1933-1967 Loan, Series 1933-1962 inclusive, for \$43,000 each, and Series 1963-1967 inclusive, for \$42,000 each. That said loan be issued in the form of coupon bonds of \$1,000 denomination, dated October 1st, 1927, registered as to principal only, and that they bear interest at the rate of 4% per annum; and that the

Commissioners of Finance offer same for sale at public bidding by sealed proposals, and that the time fixed for opening bids shall be Tuesday, January 10th, 1928, at 12.00 o'clock noon, Eastern Standard Time; that the extent of publicity to be given and the terms and conditions of sale be left to the discretion of the City Register."

9. Subsequently, the Commissioners of Finance advertised said certificates of indebtedness for sale or issue upon sealed proposals. A copy of the circular inviting proposals or bids aforesaid is filed herewith as part of this agreement, marked "Exhibit Circular."

10. That pursuant to the terms of the aforesaid public offering a bid for said alleged certificates of indebtedness was received from the defendants, The Baltimore Trust Company and Hambleton and Company, a copy of which bid is herewith filed marked "Exhibit Bid," and is made a part hereof.

11. That the bid of the said defendants was the highest bid received for said certificates of indebtedness and thereafter, to wit: on January 10th, 1928, at twelve o'clock noon the Board of Commissioners of Finance of Baltimore met and passed the following resolution:

"RESOLVED that all bids for the present offering of \$1,500,000 City of Baltimore Airport Serial 4% 1933-1967 Loan, except the joint bid of the Baltimore Trust Company of Baltimore and Hambleton and Company of Baltimore, be rejected and that the bid of The Baltimore Trust Company of Baltimore and their associate, of 103.18 and accrued interest, for \$1,500,000 Airport Serial 4% 1933-1967 Loan, be accepted and the coupon bonds awarded to them, theirs being the highest bid received for the entire offering."

12. The legality of said proposed issue of Certificates of Indebtedness and of the action of the defendant, the Mayor and City Council of Baltimore in so undertaking to issue the same is questioned by the complainant upon the following grounds:

(a) That the proposed action of the Mayor and City Council of Baltimore, through the Commissioners of Finance in issuing said Certificates of Indebtedness to the amount of one million five hundred thousand dollars (\$1,-

500,000), with interest thereon at four per cent. (4%) per annum until paid, is illegal because Chapter 431 of the Laws of Maryland of 1927, and Ordinance No. 1057 of the Mayor and City Council of Baltimore, approved April 13, 1927, do not comply with the provisions of Article 11, Section 7 of the Constitution of Maryland, in that neither said statute nor said Ordinance specifies the rate of interest on said Certificates of Indebtedness as required by the Constitution.

(b) That the Act of the General Assembly of Maryland, Chapter 431 of the Laws of Maryland of 1927, authorized the Mayor and City Council of Baltimore to issue its Certificates of Indebtedness to an amount not exceeding one million five hundred thousand dollars (\$1,500,000), and the said Certificates of Indebtedness proposed to be issued by the Mayor and City Council of Baltimore, through the Commissioners of Finance, pledges the credit of the City to the payment of a debt within the meaning of the Constitution, in excess of the said one million five hundred thousand dollars (\$1,500,000), namely by the amount of four per cent. (4%) interest thereon until paid.

(c) That the Ordinance No. 1057 of the Mayor and City Council of Baltimore is void in that it attempts to delegate to the Board of Finance Commissioners the fixing of the rate of interest to be borne by the alleged Certificates of Indebtedness.

(d) That the aforesaid Ordinance No. 1057 did not prescribe the terms of said loan and fix the interest thereof, and the interest to be borne by said loan was not submitted to the legal voters of the City of Baltimore, and was not approved by them or a majority of them, all as required by Section 7 of Article 11 of the Constitution of Maryland.

(e) That said loan and the terms thereof were not properly and legally submitted to the legal voters of the City of Baltimore and approved by them.

(f) That Ordinance No. 1057 of the Mayor and City Council of Baltimore, approved April 13, 1927, is invalid, and that the proposed action of the City through the Commissioners of Finance in issuing said Certificates of Indebtedness provided for in said Ordinance to an

amount of one million five hundred thousand dollars (\$1,500,000), with interest thereon at four per cent. (4%) per annum until paid, is illegal and unwarranted and should be enjoined because in violation of Article 11, Section 7 of the Constitution of Maryland, for the plaintiff claims that the word "debt" used in said Section 7 of Article 11 of the Constitution, includes interest both accrued and to accrue.

13. It is further claimed by the complainant that the issue of said Certificates of Indebtedness specified in said Ordinance and so submitted to the voters and approved by them is illegal and unauthorized and that such issue should, therefore, be enjoined by this Honorable Court.

A special case stated is, therefore, submitted for the determination of this Honorable Court, which is asked to determine and decide whether or not the proposed issue of said Certificates of Indebtedness under said Ordinance No. 1057, approved April 13, 1927, and under said Chapter 431 of the Acts of the General Assembly of Maryland of 1927, approved April 5, 1927, is legal, valid and duly authorized by law and in conformity with the provisions of the Constitution of this State; and accordingly, as the Court may determine, it is agreed that a decree may be entered in this cause, either enjoining and prohibiting the issue of said Certificates of Indebtedness, or deciding and determining that the proposed issue thereof is lawful and legal, and with such other provisions as may be proper in the premises.

It is further agreed that the Court may draw inferences from the facts stated, and the right of appeal to either or any party to the Court of Appeals of Maryland from any decree entered is fully reserved.

It is further agreed and stipulated that all Acts of the General Assembly of Maryland and all Ordinances of the Mayor and City Council of Baltimore, which counsel for either side may think relevant, may be read from printed volumes of such special laws and such Ordinances at the hearing of this cause in the Circuit Court of Baltimore City and also in the Court of Appeals of Maryland, and considered by said Courts with the same effect as

though said special Acts and Ordinances had been offered in evidence and set out in full in this agreement.

It is further agreed that Chapter 391, Laws of Maryland 1868, and Ordinance No. 62, approved June 24, 1868, copy of which is attached hereto and made a part hereof, and the following designated statutes and ordinances are a part of this case and record and may be read from the printed volumes in which they are published at the hearing of this case in Circuit Court No. 2 of Baltimore City and also in the Court of Appeals of Maryland, and shall be considered by said Courts with the same effect as though said statutes and ordinances had been offered in evidence and set out verbatim in this case and record:

- Chapter 36, Laws of Maryland 1868.
- Chapter 48, Laws of Maryland 1870.
- Chapter 113, Laws of Maryland 1870.
- Chapter 185, Laws of Maryland 1870.
- Chapter 303, Laws of Maryland 1870.
- Chapter 477, Laws of Maryland 1874.
- Chapter 237, Laws of Maryland 1876.
- Chapter 240, Laws of Maryland 1876.
- Chapter 265, Laws of Maryland 1878.
- Chapter 94, Laws of Maryland 1880.
- Chapter 61, Laws of Maryland 1882.
- Chapter 298, Laws of Maryland 1884.
- Chapter 432, Laws of Maryland 1884.
- Chapter 210, Laws of Maryland 1898.
- Chapter 373, Laws of Maryland 1898.
- Chapter 444, Laws of Maryland 1904.
- Chapter 349, Laws of Maryland 1904.
- Chapter 468, Laws of Maryland 1904.
- Chapter 202, Laws of Maryland 1908.
- Chapter 220, Laws of Maryland 1924.
- Chapter 221, Laws of Maryland 1924.
- Chapter 222, Laws of Maryland 1924.
- Chapter 230, Laws of Maryland 1924.
- Chapter 515, Laws of Maryland 1924.

- Ordinance No. 65, approved June 30, 1877.
- Ordinance No. 120, approved October 19, 1882.
- Ordinance No. 12, approved January 31, 1870.
- Ordinance No. 391, approved October 15, 1909.
- Ordinance No. 661, approved April 13, 1911.
- Ordinance No. 22, approved March 24, 1870.
- Ordinance No. 11, approved January 21, 1870.
- Ordinance No. 89, approved May 23, 1876.
- Ordinance No. 126, approved June 19, 1876.
- Ordinance No. 131, approved May 26, 1880.
- Ordinance No. 140, approved October 4, 1880.
- Ordinance No. 71, approved May 10, 1882.
- Ordinance No. 233, approved September 9, 1924.
- Ordinance No. 234, approved September 9, 1924.
- Ordinance No. 235, approved September 9, 1924.
- Ordinance No. 236, approved September 9, 1924.
- Ordinance No. 242, approved September 26, 1924.

It is further agreed that all of the Seven Million Dollars loan authorized by Chapter 220, Laws of Maryland 1924, and Ordinance No. 234, approved September 9th, 1924, has been issued and sold and is outstanding.

It is further agreed that all of the One Million Dollars loan authorized by Chapter 230, Laws of Maryland 1924, and Ordinance No. 242, approved September 26th, 1924, has been issued and sold and is outstanding.

It is further agreed that all of the Nine Million Dollars of the loan authorized by Chapter 222, Laws of Maryland 1924, and Ordinance No. 233, approved September 9th, 1924, has been issued and sold and is outstanding.

It is further agreed that One Million Dollars of the One Million Five Hundred Thousand Dollars loan authorized by Chapter 221, Laws of Maryland 1924, and Ordinance No. 236, approved September 9th, 1924, have been issued and sold and are outstanding.

It is further agreed that One million, five hundred and ninety-eight thousand dollars of the Two Million Dollars loan authorized by Chapter 515, Laws of Maryland 1924,

and Ordinance No. 235, approved September 9th, 1924, have been issued and sold and are outstanding.

And as in duty bound.

STUART S. JANNEY,  
Attorney for Plaintiff.

JAMES F. DOUTY, JR.,  
Plaintiff.

A. W. KRAUS,  
City Solicitor.

ALLEN A. DAVIS,  
Asst. City Solicitor, for the  
Mayor and City Council  
of Baltimore.

ROBERT FRANCE,  
For The Baltimore Trust  
Company and Hambleton  
and Company,

Attorneys for Defendants.

THE BALTIMORE TRUST COMPANY,

By I. W. IGLEHART,

HAMBLETON AND COMPANY,

By GEORGE SHRIVER,

Defendants.

I approve the filing of this Special Case Stated.

WM. F. BROENING,  
Mayor of Baltimore.

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EXHIBIT ACT OF ASSEMBLY.

CHAPTER NO. 431.

An Act to authorize the Mayor and City Council of Baltimore to issue certificates of indebtedness of said corporation to an amount not exceeding one million five hundred thousand dollars (\$1,500,000) the same to be expended for the purpose of acquiring land and improve-

ments for establishing an Airport for land and sea planes.

Section 1. Be it enacted by the General Assembly of Maryland, That the Mayor and City Council of Baltimore be, and it is hereby authorized to issue the certificates of indebtedness of said corporation to an amount not exceeding one million five hundred thousand dollars (\$1,500,000) said certificates of indebtedness to be issued from time to time and for such amounts, payable at such periods and to bear such rate of interest, all as the Mayor and City Council of Baltimore shall by ordinances from time to time provide; but no stock or bonds shall be issued in whole or in part unless the ordinance of the Mayor and City Council of Baltimore providing for the issuance thereof shall be submitted to the legal voters of Baltimore City at such time and place as may be fixed by said ordinance, and be approved by a majority of the votes cast at such time and place as required by Section 7 of Article 11 of the Constitution of Maryland, and the Mayor and City Council of Baltimore in submitting the ordinance for the issuance of said stock or bonds to the legal voters of Baltimore City may submit the same at any Municipal Election as well as any General Election.

Sec. 2. And be it further enacted, That the proceeds of said certificates of indebtedness not exceeding their par value hereby authorized to be issued shall be used for the acquisition by purchase or condemnation of land and/or improvements on land for the purpose of establishing and maintaining for public purposes an Airport in the City of Baltimore to thereby afford suitable landing facilities for accommodating land and sea planes.

Sec. 3. And be it further enacted, That the Mayor and City Council of Baltimore may by ordinance authorize the issuance of said certificates of indebtedness in series, maturing at stated periods, and may make payable annually a proportion of the principal of said certificates of indebtedness; and any portion or all of said certificates may be registered, or not registered, and said certificates or any portion thereof shall have interest coupons attached, or said certificates, or any portion thereof shall not have interest coupons attached, as may be provided by or under the authority of said ordinance, and

said certificates of indebtedness when issued shall bear interest at such rate or rates as may be provided by or under the authority of said ordinance. If said certificates are issued in series maturing at stated periods, and a proportion of the principal is made payable annually, the Mayor and City Council of Baltimore shall annually raise by taxation the amount of money required to meet the interest and the proportion of the principal payable in said year. If said certificates are not issued in series, any premiums above the par value of the whole amount of said certificates shall constitute a part of the sinking fund created for the purpose of paying the loan herein authorized; if said certificates of indebtedness are issued in series, such premiums shall be placed to the credit of any existing sinking fund established for the payment of any loans of the Mayor and City Council of Baltimore.

Sec. 4. And be it further enacted, That this Act is hereby declared to be an emergency law and necessary for the immediate preservation of the public health and safety, and having been passed by a yea and nay vote, supported by three-fifths of all of the members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

Approved April 5, 1927.

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#### EXHIBIT ORDINANCE.

NO. 1057.

An ordinance to authorize the Mayor and City Council of Baltimore (pursuant to Chapter 431 of the Acts of the General Assembly of Maryland of 1927) to issue its certificates of indebtedness to an amount not exceeding One Million Five Hundred Thousand Dollars (\$1,500,000) for the acquisition, by purchase or condemnation, of land and/or improvements on land, for the purpose of establishing and maintaining for public purposes an airport in the City of Baltimore to thereby afford suitable landing facilities for accommodating land and sea planes.

Whereas, by Chapter 431 of the Acts of the General Assembly of Maryland of 1927, the Mayor and City Council of Baltimore is authorized to issue its certificates of indebtedness to an amount not exceeding One Million Five Hundred Thousand Dollars (\$1,500,000) in the manner and upon the terms set forth in said Act, the proceeds thereof, not exceeding the par value of said certificates of indebtedness, to be used for the acquisition, by purchase or condemnation, of land and/or improvements on land, for the purpose of establishing and maintaining for public purposes an airport in the City of Baltimore to thereby afford suitable landing facilities for accommodating land and sea planes; and

Whereas, money is now needed for said purposes.

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Commissioners of Finance be, and they are hereby authorized and directed to issue the certificates of indebtedness of the City of Baltimore to the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) from time to time as the same may be required for the purposes herein above named; and the said certificates of indebtedness shall be sold by said Commissioners of Finance from time to time, and at such times as shall be requisite, and the proceeds of the sale of said certificates of indebtedness, not exceeding their par value, shall be used for the purposes hereinbefore named, provided that this ordinance shall not go into effect unless it shall be approved by the majority of the votes of the legal voters of the City of Baltimore cast at the time and place hereinafter designated by this ordinance.

Section 2. And be it further ordained, That said certificates of indebtedness shall be issued in denominations of One Thousand Dollars (\$1,000) or multiples thereof, to be redeemable in thirty-five (35) yearly series, the first series amounting to Forty-three Thousand Dollars (\$43,000) to be redeemable on the first day of October, 1933, and a series of the same amount; to wit, Forty-three Thousand Dollars (\$43,000) to be redeemable on October first of each succeeding year until and including the year 1962; and a series amounting to Forty-Two thousand dollars (\$42,000) to be redeemable on the first

day of October, 1963, and a series of the same amount; to wit, Forty-two Thousand Dollars (\$42,000) to be redeemable on October first of each succeeding year until and including the year 1967, when the last series shall have been redeemed.

Said certificates of indebtedness when issued shall bear interest at such rate or rates as may be determined by the Commissioners of Finance at the time when any of said certificates are issued, the interest to be payable semi-annually on the first day of April and the first day of October in each year during the respective periods that the series in which said certificates are issued may run; and any portion or all of said certificates may be registered, or not registered, and said certificates, or any portion thereof, shall have interest coupons attached, or any portion thereof shall not have interest coupons attached, as may be determined from time to time by the Commissioners of Finance.

Section 3. And be it further ordained, That a sum sufficient to meet the interest on any outstanding certificates of indebtedness as well as the principal of the current maturing series of said certificates, shall be annually collected by taxation, and that a rate sufficient to produce said sum shall be levied in each year upon every one hundred dollars' worth of assessable property in the City of Baltimore, and in the proper proportion for any greater or less amount.

Section 4. And be it further ordained, That this ordinance shall be submitted to the legal voters of the City of Baltimore, for their approval or disapproval, at the municipal election to be held in Baltimore City on the first Tuesday after the first Monday in May, 1927.

Section 5. And be it further ordained, That a copy of this ordinance and notice of the time for holding said election shall be published in at least two of the daily newspaper published in said City of Baltimore twice a week for two weeks prior to said election, the first publication to be not later than April 18, 1927.

Section 6. And be it further ordained, That the proceeds of the certificates of indebtedness, not exceeding their par value, hereby authorized to be issued shall be

used for the acquisition, by purchase or condemnation, of land and/or improvements on land, for the purpose of establishing and maintaining for public purposes an airport in the City of Baltimore to thereby afford suitable landing facilities for accommodating land and sea planes.

Approved, April 13, 1927.

HOWARD W. JACKSON,  
Mayor.

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EXHIBIT CIRCULAR.

(Baltimore, Md., January 3rd, 1928.)

PROPOSAL FOR

\$1,500,000 OF FOUR PER CENT. COUPON  
BONDS OF THE CITY OF BALTIMORE

Exempt from the Federal Income Tax

and from our

City and State Taxation.

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All issues of Baltimore City Securities are legal investments for Trust Funds and Savings Banks.

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Sealed Proposals will be received by the Register of the City of Baltimore, at his office, City Hall, until

TUESDAY, THE 10TH DAY OF JANUARY, 1928

12 o'Clock, Noon, (Eastern Standard Time)

when a meeting of the Commissioners of Finance will be held for the purpose of opening bids for the whole or part of the following-described Coupon Bonds of the Mayor and City Council of Baltimore, Md., intended to be sold to the highest responsible bidder. The price at which this issue may be sold is not limited by law.

## \$1,500,000 AIRPORT SERIAL 4% 1933-1967 LOAN.

This Loan was duly authorized to be issued by Chapter 431 of the Acts of the General Assembly of Maryland of 1927, and Ordinance No. 1057 of the Mayor and City Council of Baltimore, approved April 13th, 1927, and was ratified by the legal voters of the City of Baltimore at an election held on May 3rd, 1927. Votes for, 66,445; against, 22,665. The Act and Ordinance provide for the issuance of certificates of indebtedness of the Mayor and City Council of Baltimore to an amount not exceeding \$1,500,000 for the acquisition, by purchase or condemnation of land and/or improvements on land, for the purpose of establishing and maintaining for public purposes an Airport in the City of Baltimore to thereby afford suitable landing facilities for accommodating land and sea planes. None of this Loan has heretofore been issued.

Principal  
payable  
yearly  
October 1st,  
1933-1967.

This Loan is issued in thirty-five series, one series maturing each year, beginning with the year 1933 and ending with the year 1967. The series are redeemable on the first day of October each year. The series to be issued at this time consist of the following:

Interest  
payable  
semi-annually  
on April 1st  
and  
October 1st.

Series 1933 to 1962, inc.....\$43,000, each  
Series 1963 to 1967, inc..... 42,000, each

### CONDITIONS OF SALE.

1. No proposal containing conditions inconsistent with those herein set forth will be entertained.
2. All proposals must name a price for each \$100, with accrued interest to date of settlement. Bonds will be dated October 1st, 1927, and the date of delivery shall be February 16th, 1928.
3. Bids will be received for the whole or for any part of the amount offered. Bids will be received for all or none of the amount offered; also for all or none of any part or parts. Unless bids specify "all or none" of the amount bid for, a portion of the amount may be allotted.
4. Every bid must be accompanied by a certified check on a clearing-house bank, drawn to the order of the Mayor and City Council of Baltimore, or

cash, for two per cent. of the amount of bonds for which bid is made. But no deposit by any one party need be for more than two per cent. of the entire amount offered for sale.

5. If the bidder shall have failed to pay in full on or before February 16th, 1928, for the amount of bonds allotted to him, the deposit made therefor shall be forfeited to, and retained by, the City, as liquidated damages for such neglect or refusal, and shall thereafter be paid into the sinking fund of the City for the redemption of the funded debt.

6. Upon the payment to the City Register on the day of delivery by the persons whose bids are accepted, of the amounts due for the bonds awarded to them respectively, bonds thereof will be issued to them in denomination of \$1,000 registered as to principal only.

7. Checks or cash accompanying bids not accepted will be returned to the bidders immediately after the allotment is made. Deposits of successful bidders will be applied as partial payments for the bonds allotted to them. Should there be more than one proposal at the same price, a pro rata allotment may be made.

8. The proposals must be enclosed in a sealed envelope, addressed to the "Commissioner of Finance of Baltimore City," and sent to the office of the City Register.

9. Each bid must bear the address of the bidder, and notification of acceptance of any bid will be considered accomplished when mailed in the Baltimore Postoffice to such address. Bids must be received at the office of the City Register not later than 12 o'clock noon Eastern Standard Time, on January 10th, 1928, and the Commissioners of Finance reserve to themselves the absolute right, in their discretion, to reject any or all proposals.

A. M. DENHARD,  
City Register.

ASSESSED VALUE OF CITY PROPERTY FOR  
PURPOSES OF TAXATION, 1928.

ASSESSED AT FULL VALUE:

Real Estate.....	\$744,644,305	
Personal .....	60,798,209	
Incorporated Companies.....	73,000,000	
Distilled Spirits in Bond.....	200,000	
		<u>\$878,642,514</u>

ASSESSED AT FIXED RATES:

Securities .....	\$502,747,640	
Suburban Property.....	73,636,360	
Rural Property.....	45,004,975	
Savings Banks Deposits (esti- mated) .....	160,000,000	
New Addition:—		
Real Estate.....	245,759,726	
Personal .....	13,249,355	
Incorporated Companies.....	12,000,000	
Securities .....	4,000,000	
		<u>1,056,398,056</u>
Total Assessable Basis.....		<u>\$1,935,040,570</u>

FINANCIAL CONDITION OF THE MAYOR AND  
CITY COUNCIL OF BALTIMORE.

(December 30th, 1927)

Total Funded Debt.....	\$160,170,742.69	
Less		
Water Debt.....	28,791,000.00	
		<u>\$131,379,742.69</u>
Total Sinking Funds, Face		
Value .....	\$35,916,577.57	
Less		
Water Sinking Funds.....	2,875,184.34	
		<u>33,041,393.23</u>
Net Debt, Exclusive of Water Debt.....		<u>\$98,338,349.46</u>

EXHIBIT BID.  
THE BALTIMORE TRUST COMPANY  
BALTIMORE, MARYLAND

Jan. 10, 1928.

Commissioners of Finance of Baltimore City,  
City Hall,  
Baltimore, Md.

Gentlemen :

Referring to your advertised sale of \$1,500,000 4% coupon bonds of the City of Baltimore, Md., Airport Serial 1933-67 Loan, copy of which advertisement is attached hereto and made a part of this bid, we bid \$103.18 per \$100.00 face amount of bonds plus accrued interest to date of delivery for all or none of the \$1,500,000 so advertised.

This bid is conditioned upon the approval of our counsel as to the legality, issuance, and delivery of the above named securities, and further this bid is also made upon the condition that the securities named are the direct obligation of Baltimore City, and that the full faith and credit of the said City is pledged as to their maturity and interest payments.

As per your advertisement, we enclose certified check drawn to the order of the Mayor and City Council of Baltimore for \$30,000, which check is to be retained by you as part payment for the bonds in the event that our bid is accepted, and to be returned to us immediately in the event that our bid is rejected.

Very truly yours,

THE BALTIMORE TRUST COMPANY,  
Baltimore, Md.

By R. H. BOND,  
Vice-President.

HAMBLETON & COMPANY,  
Baltimore, Md.

By GEORGE SHRIVER.

Chapter 391, Laws of Maryland, 1868, Page 713,

“AN ACT to authorize the Mayor and City Council of Baltimore to issue the Bonds of the said City for the purpose of building a City Hall.

SECTION 1. *Be It Enacted By the General Assembly of Maryland*, That the Mayor and City Council of Baltimore be and they are hereby authorized to issue the Bonds of the said City to an amount not exceeding the sum of one million of dollars, the proceeds from the sale of said Bonds to be used in the construction of a City Hall in the City of Baltimore; provided, that before the issue of said Bonds the said loan be authorized by an ordinance of the Mayor and City Council of Baltimore, and approved by a majority of the votes of the legal voters of the said City, cast at such time and places as may be fixed by said ordinance as prescribed in the seventh Section of Article eleven of the Constitution of this State.

SEC. 2. *And Be It Enacted*, That this Act shall take effect from the date of its passage.

Approved March 30, 1868.”

Ordinance No. 62, approved June 24, 1868,

“*An ordinance to provide for the issuing of the bonds of the city, as authorized by Chapter 391 of the Acts of the General Assembly of Maryland, entitled ‘An Act to authorize the Mayor and City Council of Baltimore to issue the bonds of the said city for the purpose of building a City Hall.’*”

SECTION 1. *Be It Enacted and Ordained by the Mayor and City Council of Baltimore*, that the Register of the City be and he is hereby authorized and directed to issue the bonds of the City from time to time as the same may be required, in the course of the erection of the new City Hall, should it hereafter be determined to erect said Hall, to an amount not exceeding one million of dollars, the proceeds from the sale of said bonds to be used in the construction of said City Hall; provided, that this ordinance shall be approved by a majority of the votes of the legal voters of the City cast at the election hereinafter provided for.

SECTION 2. *And Be It Enacted and Ordained*, that the said bonds shall be issued in sums of not less than one hundred dollars each, redeemable in fifteen years, and bearing interest at six per cent. per annum, payable quarterly and transferable as other city bonds.

SECTION 3. \* \* \*

SECTION 4. *And Be It Enacted and Ordained*, that this ordinance shall be submitted to the legal voters of the City of Baltimore for their approval or disapproval, at an election to be held on the eight day of July, A. D. 1868, on which day polls shall be opened in the various precincts of the said City, at the usual places of voting in said precincts, said polls to be opened and closed at the same time as provided by law for other elections, at which said election each of the said voters that shall approve the adoption of this ordinance, shall deposit a ticket or ballot on which shall be written or printed the words 'For the Ordinance,' and each of the said voters that shall be opposed to the adoption of this ordinance, shall deposit a ticket or ballot upon which shall be written or printed the words 'Against the Ordinance.'

SECTION 5. \* \* \*

SECTION 6. *And Be It Enacted and Ordained*, that a copy of this ordinance and notice of the time of holding the said election, shall be published in at least four of the daily newspaper of the City of Baltimore twice a week for two weeks prior to the said election.

SECTION 7. *And Be It Enacted and Ordained*, that the City Comptroller be and he is hereby authorized and directed to have printed tickets of the description mentioned in Section 4 of this ordinance, and placed at all the polls of the said City on the day of the said election, and that the Register be and he is hereby authorized and directed to pay the expenses of the said printing and of the publication provided for in the preceding section, out of any monies in the treasury not otherwise appropriated.

Approved June 24, 1868.

ROBERT T. BANKS, Mayor."

## DECREE.

This case coming on to be heard upon the agreed statement thereof, and having been argued:

IT IS THEREUPON this 10th day of February, 1928, by the Circuit Court No. 2 of Baltimore City, adjudged, ordered, and decreed:

1. That the proposed issue of certificates of indebtedness of the Mayor and City Council of Baltimore under Chapter 431 of the Acts of 1927, approved April 5, 1927, and under Ordinance No. 1057 of the Mayor and City Council of Baltimore approved April 13, 1927, in the aggregate amount of \$1,500,000.00 principal, said certificates bearing interest at the rate of four per cent. (4%) per annum as fixed in resolution of the Board of Commissioners of Finance of Baltimore City adopted December 29, 1927, said Ordinance having been properly and legally submitted to and approved by the voters of said City, is lawful, valid and regular, and not in any respect contrary to the provisions of Section 7 of Article 11 of the Constitution of Maryland that said certificates of indebtedness may lawfully be issued bearing the interest rate hereinabove mentioned.

2. That any injunction against the issue of said certificates of indebtedness in the manner set forth in said agreed statement or the exhibits constituting part thereof, is therefore refused and denied.

3. That the costs in this cause be paid by the plaintiff.

JOSEPH N. ULMAN.

Mr. Clerk:

Enter an appeal from the decree in this case to the Court of Appeals of Maryland.

STUART S. JANNEY,

Attorney for Plaintiff.

Which said appeal being by the Court here also granted it is thereupon ordered by the Court here that trans-

cript of the record of proceedings in the case aforesaid, be transmitted to the Court of Appeals of the State of Maryland under the rules thereof, and the same is transmitted accordingly.

Test:

JOHN PLEASANTS,

Clerk of the Circuit Court  
No. 2 of Baltimore City.

In testimony whereof that the foregoing is a full and true transcript of the foregoing papers taken from the record of proceedings in the Circuit Court No. 2 of Baltimore City in the cause therein mentioned.

(Seal.) I hereunto set my hand and affix the seal of the said Circuit Court No. 2 of Baltimore City on the 10th day of February, in the year of our Lord nineteen hundred and twenty-eight.

Test:

JOHN PLEASANTS,

Clerk of the Circuit Court  
No. 2 of Baltimore City.