

No. 28

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January Term 1927

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Motion Reargument

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Filed April 22, 1927

Motion overruled

This 6<sup>th</sup> day of May 1927

Carroll T. Bond,  
Chief Judge

THE R. B. CONSTRUCTION  
COMPANY, a Body Corpor-  
ate,

Appellant,

vs.

HOWARD W. JACKSON, Mayor  
of Baltimore City, and  
CHARLES H. OSBORNE, In-  
spector of Buildings for  
Baltimore City,

Appellees.

IN THE

*Court of Appeals*

OF MARYLAND.

—  
JANUARY TERM, 1927.

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GENERAL DOCKET No. 28.

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**MOTION FOR RE-ARGUMENT.**

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The R. B. Construction Company, the appellant in the above-entitled cause, respectfully moves the Court to grant a re-argument of the said cause for the following reasons:

1. The opinion and judgment rendered in said cause on March 23, 1927, by a majority of the Judges of the Court who heard the argument thereof at the January Term, 1927, are irreconcilably at variance with and abandon and reverse the long line of decisions of this Court, defining the nature, extent and limits of the police power of the State, and, against the salutary principles of those decisions, exalt and extend the police power of the City of Baltimore above and beyond the guarantees and limitations of the Declaration of Rights and the Constitution of Maryland which secure to the people of the State and of said City their

absolute rights of personal liberty, private property and personal security.

Tighe v. Osborne, Daily Record, April 10, 1926.  
 Tighe v. Osborne, 149 Md. 356.  
 Goldman v. Crowther, 147 Md. 282.  
 Byrne v. Md. Realty Co., 129 Md. 202.  
 Stubbs v. Scott, 127 Md. 86.  
 Bostock v. Sams, 95 Md. 400.  
 State v. The Coal Companies, 116 Md. 380.  
 Hagerstown v. B. & O. R. R. Co., 107 Md. 178.  
 Gallagher v. Fleury, 99 Md. 181.  
 Long v. State, 74 Md. 565.  
 Singer v. State, 72 Md. 464.  
 State v. Mott, 61 Md. 303.  
 Baltimore v. Radecke, 49 Md. 217.  
 Storck v. Baltimore, 101 Md. 484-487.  
 Baltimore v. Hampton Court, 134 Md. 349, 350.  
 Clark v. Md. Inst., 87 Md. 660.  
 State v. Mercer, 132 Md. 266.  
 Frostburg v. Hitchins, 99 Md. 617.  
 Frostburg v. Wineland, 98 Md. 239.  
 King v. Hamill, 97 Md. 103.  
 New Windsor v. Stockdale, 95 Md. 215.  
 Luman v. Hitchens, etc., 90 Md. 24-29.  
 Ulman v. Baltimore, 72 Md. 594.  
 Shaffer & Munn v. Mining Co., 55 Md. 80.  
 Baltimore v. Scharf, 54 Md. 499.  
 New Central etc. Co. v. Georges Creek Co., 37  
 Md. 559.  
 Baltimore v. State, 15 Md. 454-455; 462-464.  
 Moale v. Baltimore, 5 Md. 321.  
 The Regents Case, 9 Gill & Johnson 365, 408,  
 412-413.

2. The said opinion and judgment of the majority of the said Judges would render the police power of the City of Baltimore paramount to the Declaration of Rights and Constitution of Maryland and would enable said City arbitrarily and oppressively to override the fundamental principles of the Organic Law of the State and deprive its citizens of the rights and immunities guaranteed to them by the same.

Maryland Decisions from The Regents Case to Tighe v. Osborne, cited above.

3. The decisions of this Court in the case of Goldman v. Crowther, 147 Md. 290-291, and Tighe v. Osborne, 149 Md. 359-361, declared and settled the law of the State respecting Article V, Section 22 (f), of City Ordinance 922, approved May 19, 1923, to be that said section of the Ordinance was illegal and void as unlawfully attempting to delegate unrestrained and arbitrary legislative and administrative powers to the Board of Zoning Appeals (see Main Brief of Appellant in this case, pages 67-68).

This being the law of the case respecting said section of the Ordinance, declared and adjudged by the decision of the Court in Goldman v. Crowther and in Tighe v. Osborne (149 Md. 359-361), it becomes the settled law of this case as to the illegality of the said section in its operation and effect.

The Holloway Cases, October Term, 1926, decided January 12, 1927, Daily Record, January 18, 1927, and the authorities therein referred to in the opinion of the Court delivered by His Honor, Judge Parke.

Waters v. Waters, 28 Md. 22.

Smith v. Lord, 111 Md. 503.

4. The said Opinion and Judgment of the majority of the Judges who heard the argument of the appeal would permit the property of the citizens of Baltimore City and of Maryland to be taken without just compensation.

Cases cited in Appellant's Brief at pages 66-67 and 72-76.

5. The said Opinion and Judgment would transform and convert the Constitution and Government of Maryland, founded upon the Liberties of the Individual Citizen, into a Paternal and Communist State with powers unrestrained by constitutional limitations and guaranties and with the liberty and property of the citizen at its mercy.

Coke, 2nd Institute, 46-47; 55.

1 Blackstone's Commentaries, 127-140.

Plowden's *Jura Anglorum*, 78-79; 462-465.

Cooley, Constitutional Limitations, 7th Ed., pp. 68-69; 233-234; 244-245; 417-418; 500-506; 508-509; 550.

Mr. Justice Story in *Wilkinson v. Leland*, 2 Peters 657.

Tiedeman, Police Power, Sec. 122a.

Lieber, Civil Liberty and Self Government, pages 103-105.

Freund, Police Power, Sections 16; 20; 23; 511-517.

In Freund on the "Police Power—Constitutional Rights and Public Policy," Section 23, that learned and profound author says:

*"Individual liberty is regarded as more important than the advancement of interests which, while admittedly public, are not urgent or primary."*

And in the same great work, Section 16, it is also said:

*"The highest conception of the State, however, repudiates the absolute and unquestioning subordination of the individual to society, and insists upon the preservation of individual liberty as an essential factor in civilization, and as one which will ultimately lead to a more perfect social welfare, though it may produce temporary disturbances or delays in the accomplishment of what is believed to be the public good. This conception of the State is, indorsed by our Constitutions, and the idea of a public welfare bought at the cost of suppressing individual liberty and right is, therefore, in our system of government, inadmissible."*

And we again earnestly and respectfully beg leave to recall to the mind of the Court, the deep significant words of an eminent American Judge, pronounced with the full approval of Marshall and Story, and since repeatedly cited in the authoritative treatises upon our Constitutions:

*"As to the words from Magna Charta, incorporated into the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure THE INDIVIDUAL from the arbitrary exercise of the powers of government unrestrained by the established principles of private rights and distributive justice." Per Mr. Justice Johnson in Bank of Columbia v. Okely, 4 Wheaton 235.*

6. In view of the fact that the Court by the said opinion and judgment rendered herein has, by a majority of one of the seven Judges who heard the argument, reversed its former decisions upon the subject of this appeal, and in view of the importance of the subject, it is respectfully

submitted that it would be proper and just for this Honorable Court to order a re-argument of the cause before all the Judges of the Court.

ISAAC LOBE STRAUS,

WM. PINKNEY WHYTE,

JESSE ASHMAN,

Attorneys for the Appellant.