791

was a manufacturing industry within the meaning of the exemption. The court held that it was not, and then said:

"Although the constitutionality of the Act of 1882, Chapter 208, was argued, it was not raised by the pleadings, and we do not deem it necessary to pass upon it. Having determined that the appellant is not within the meaning of the ordinance upon which it relies for exemption from taxation, no good can be accomplished by discussing the constitutionality of the statute. If we reach the conclusion urged upon us by the appelless, that the law was unconstitutional, it would only be an additional reason for deciding the case as we do, and, if we were of the centrary opinion, we would be determining an important question that is wholly unnecessary for the purposes of this case".

792

In the above case at nisi prius, Judge McSherry did consider the constitutionality of the Act authorizing the City of Frederick to exempt manufacturing industries from taxation, and he reached the conclusion, in an opinion set out in the record of that case, that the Act was unconstitutional, in that it delegated to the municipality the power to determine "when State policy and considerations beneficial to the public justify" the exemption, which he said is confiding to the City Council legislative action of a kind which would cause inequality in texation in the constitutional sense.

793

As already stated, however, the Court of Appeals has twice refused to pass upon the question. In other States, there is a diversity of opinion; but plant exemption statutes have been frequently upheld on the theory that the Legislature has the right to apportion taxes as it deems proper, and to decide what classes shall bear, and what classes shall not bear, the public burden.

794

The question, therefore, outside of Maryland, is an open one, and, in view of the refusal of our highest court to pass upon se important a subject until compelled to do so, I think that whatever doubt there may be should be resolved by this Department in favor of the power of the Legislature, and in favor of the validity of the ordinances which already exist, and which grant plant exemptions to manufacturing industries. While it may be proper to indicate to you that there is some doubt about the legality of all ordinances conferring plant exemptions, yet I do not think that, in a matter of so much importance to the manufacturing industries of Baltimore, I should promounce these ordinances unconstitutional, especially when the weight of authority outside of Maryland seems to be in support of such legislation. I think, moreover, that there is no necessity for doing this in any event, as the particular ordinance new in question seems to me invalid on other grounds.