

File No. 36404 Continued

at the threshold of the whole case, it will be first considered, other questions being reserved until last.

Section 18 of Chapter 123 of the Acts of 1826, incorporating the Railroad Company, provides:

"And the shares of the capital stock of the said Company, shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the States assenting to this law."

The exemption section of the Company's Charter has been the subject of judicial construction in more than one case, and it is necessary to understand precisely what has been decided in reference thereto.

In the case of Mayor and City Council vs. B. & O. 6 Gill 292 (decided in 1848) the power to tax the real and personal property of the Company was one of the questions directly involved, and all of the Judges were of opinion that no such power existed, the Court holding:

"There is nothing in the Charter of the Baltimore & Ohio Railroad Company or the terms and expression in which it is couched, or in the objects designed to be accomplished by it, that would justify a construction of the exemption from taxation as less comprehensive and universal than its terms would ordinarily import. It must, therefore, be held as an exclusion, not only of the State's right to tax, but of the right of all manner of corporations created by the State, within whose limits the Company may have either real or personal property.

"But it is said, that although by the Charter of the Baltimore & Ohio Railroad Company, the shares of stock may be exempt from all taxation, yet that such exemption in nowise protects from taxation the specific articles of property of the Company.

"The design contemplated by the Legislature * * * was to confer a certain substantial, not a nominal benefit * * * To impute to the Legislature * * * an intention to exempt the shares of stock from taxation, and at the same time reserve the right to tax everything which constituted it a stock, and gave to it its value, would be gratuitously to cast an imputation upon the Legislature inconsistent with every principle of judicial courtesy.

"The effort made to restrict the immunity now under consideration to State taxes only, cannot be sustained. The terms used in its grant are so broad, unambiguous and universal * * * that their full and natural import must be given to them. The exemption covers county and city, as well as State taxes."

In the later case, of State vs. B. & O. 48 Md., 71 (decided in 1878) it was contended by the Attorney-General that the decision of the Court in 6 Gill, holding the property exempt, was not necessary in