

File No. 36404 Continued

that case, and should not control the judgment of the Court. Answering this, Judge Robinson for the majority of the Court said:

"The decision (6th Gill) was made in a case in which the B. & O. Railroad Company was a party and upon the very section of its Charter now under consideration. From that time to the present, a period of thirty years, it has been the accepted law of this State; and upon the faith of it millions of dollars have been invested in the property of this Company. Every consideration, therefore, of public policy, and of private right, demands that the decision of the Court upon the question then submitted to its adjudication, shall be deemed final and conclusive."

The suit in that case was instituted by the State to recover from the Company a tax on gross receipts imposed in the Act of 1872, Chapter 234, upon steam railroads and flowing from the exercise of franchises. It was contended on behalf of the State that whatever else might have been decided by the Court in 6th Gill, relating to the exemption of the Company's property from a direct tax, the Court did not hold that the franchises of the Company were exempt, and that the exemption of the stock did not exempt the franchises and accordingly, the gross receipts from the exercise of these franchises were taxable by the State. The Court, conceding this, ruled:

"And to say they (the Legislature) meant to exempt the shares only, and to reserve the right to tax the property and franchises, is a construction that would render the privilege thus granted of no practical benefit \* \* \* \* So considering the question as one of first impression, we are of opinion that the 18th section exempts the property and franchises of the Company from taxation. If the franchises are exempt, it would necessarily follow that the gross receipts derived from the exercise of its franchises, are also exempt."

The exemption, great as it was held to be by the Court in that case, extending to the "entire road from Baltimore to the Ohio River \* \* \* lateral roads \* \* \* all buildings and works necessary and expedient to the operation of its road", was held not to be without limitation. The Court next inquired "What are the buildings and works necessary and expedient to the operation of the road within the meaning of the Charter?", and answering that question, the Court held: