

File No. 36404 Continued.

clusively presumed to have thereby surrendered any exemption from taxation to which it may be entitled under its Charter, and shall be thereafter subject to taxation as if no such exemption had been granted by its Charter."

Whether or not the Company had enjoyed or availed itself of the privileges of any general or special Act, whereby its tax exemption was surrendered, came before the Court of Appeals of Maryland in the case of State vs. B. & O., 127 Md., 435 (decided January 13, 1916,) and again the Company was successful in maintaining its exemption.

The State brought suit for the recovery of gross receipts taxes for the years 1896 to 1908 at the full rate provided by the general law applicable to steam railroad companies, over and above the rate as fixed by the contract of 1878, and sought to maintain its position under the provisions of the Constitutional Amendment of 1891. The Court, through Judge Stockbridge, in a careful opinion, considered the several grounds relied upon by the State to show that the Company had availed itself of special or general laws, thereby surrendering its exemption. One was the acceptance and user of rights under sundry ordinances of the Mayor and City Council of Baltimore "relating for the most part to the laying of switches or spurs; erection of a shed on the lot bounded by Parkin Street; establishing the height of the Baltimore & Ohio Central Building, and the construction of a single track on South Howard Street;" the Court saying "each and all of these were only the exercise of the police power of the municipal corporation. They conferred no new privilege or right not already possessed under the original Charter of the Railroad Company, and, therefore, they cannot be regarded as a grant of privileges as that expression is used in the Constitutional Amendment of 1891."

The next question considered by the Court was whether the Compromise Act of 1878 was "a modification, tantamount to the new grant of a new Charter to the Baltimore & Ohio Railroad Company accepted as such by the Railroad Company", thereby subjecting it to the Constitution of 1851 and 1867, which prohibited the grant by the Legislature of an irrevocable or unamendable Charter, and making all Charters thereafter granted, subject to amendment, modification or repeal