of Appeals case to which I made reference and was also a member of the Ross Commission in 1941 which studied the B&O special situation. I would yield to Judge Henderson.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: Very briefly I would just like to answer Delegate Case's question, because I did happen to argue the case in the Court of Appeals where we very strenuously, at the time I was Assistant Attorney General, made the point that the State could not barter away its sovereign power, and also made the point that this exemption was granted as an inducement to build property which had long since been replaced and had outlived its usefulness by almost a hundred years or more. All of those points were made but they were unavailing.

The Court of Appeals, in an opinion by Judge Park, relied heavily upon the Dartmouth College case, of course, in the Supreme Court, and they said that this was an inviolate contract and it existed in perpetuity.

Now, the point about this constitutional provision and the reason why I should strongly urge that it be retained in the constitution is that in its present form it was virtually a compromise with the B&O.

The B&O did surrender some of its tax exemptions. It does pay a good many taxes. All that is left, really, of its tax exemption—although that amounts to a good deal of money—is the one-fifth rate on gross receipts and the property exemption on only one of its many lines, so that it has been whittled down to some extent.

Nevertheless, I recall in the argument of this case that I urged my colleague, Norwood Orrick, to ask the Court of Appeals whether we were really dealing with the iron horse or the sacred cow, but being a young man he declined to answer that question.

THE CHAIRMAN: Delegate Clagett.

DELEGATE CLAGETT: Delegate Gallagher, the prospect of a bonanza in the form of income or receipts is certainly very alluring, but what study did the Committee make of the practicality of retaining this provision as related to the present financial condition of the Baltimore and Ohio Railroad and other railroads throughout the country?

THE CHAIRMAN: Delegate Gallagher.

DELEGATE GALLAGHER: Well, the Baltimore and Ohio Railroad is the only railroad in the State of Maryland which enjoys this unique exemption. It has been very careful to preserve it, because it has never altered its original charter of 1826. It is quite aware of the monetary value it enjoys and it is equally aware of the impact of this constitutional provision operating upon any charter modification. It has also refrained thus far from carrying out a contract obligation—that is to say, merger with the C&O Railroad—which would undoubtedly bring it within the four corners of this constitutional section.

THE CHAIRMAN: Delegate Clagett.

DELEGATE CLAGETT: I do not believe you understood my question. My question really is what study was made by the Committee to determine the ability of the Baltimore and Ohio Railroad to pay any such taxes if and when this protection went out of the constitution and they were required to pay it?

THE CHAIRMAN: Delegate Gallagher.

DELEGATE GALLAGHER: We did not inquire into that. In addition to Judge Henderson, however, there was another member of the Ross Commission, Mr. Walter Lewis, who is quite familiar with this section, and it was his estimate that the impact of the exemption was worth several million dollars. We did not feel it was incumbent upon us to look into the ability of the railroad to pay.

As a former people's counsel, I do recognize the ability of public utilities to increase their rates to take care of increased expenditures, and I would believe the B&O would not be averse to taking this road to economic security.

THE CHAIRMAN: Delegate Clagett.

DELEGATE CLAGETT: By way of caption on what we have said, I gather the Committee then made no background study to determine whether if this exemption was lost by the B&O it would be or would not be able to meet the obligation to tax?

DELEGATE GALLAGHER: No, sir, we did not feel that was a proper matter of inquiry.

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: Maybe we can get at it this way, Mr. Chairman.

Succinctly, would the B&O Railroad like to see this provision in the constitution or out of the constitution?