

that the Acts imposing "such a tax or burden upon the Company with its consent," were constitutional and valid.—*State vs. Baltimore and Ohio Railroad Company*, 34 Maryland, pages 327–374.

The Court of Appeals, moreover, was of opinion that the validity of the law could not properly be drawn in question in the particular case, because the Company had no right of property in the fund collected for the use of the State, which it could maintain against the claim of the State.—*Same case*, pages 363–367.

The counsel for the State rely, in their report to the Governor, upon the cases of *Furman vs. Nichol*, 8 Wallace, 55, and *Parmelee vs. Lawrence*, 11 Wallace, 38, as showing that no right of appeal from the Court of Appeals to the Supreme Court of the United States will exist when the judgment of the Court of Appeals in favor of the State is finally rendered in conformity with the rulings of the Court of Appeals in the case reported in 34 Maryland, page 359.

The counsel for the Baltimore and Ohio Railroad Company insist, on the contrary, that the common count upon which the State sued in the Superior Court, taken in connection with the bill of particulars filed by the State, and the Acts of Assembly offered in evidence by the State, amounts in law to a special count upon the contract evidenced by the Act of Assembly; that the ruling of the Superior Court was germane and necessary; that the Court of Appeals could not properly have reversed the judgment of the Superior Court, or could not affirm any other judgment of that Court on the same pleadings, without determining the constitutionality of the laws by which this payment was exacted; and that the case of the *Insurance Company vs. The Treasurer*, 11 Wallace, 208, demonstrates that the Supreme Court will entertain jurisdiction of this cause upon final appeal from the Court of Appeals of this State.

Indeed, it is not understood that any question is made as to the right of the Baltimore and Ohio Railroad Company to appeal to the Supreme Court of the United States from the judgments of the Court of Appeals to be given in the cases yet pending, brought for the recovery of the State's proportion of the passenger fares received since December 10th, 1870. For, on the day last referred to, the Company reduced its fare, and refused to collect, or receive into its Treasury, that proportionable part of its fare which was claimed by the State; and the right of the State, in such case, must, therefore, depend upon its power to enforce the Statutes now drawn in question as valid contracts between the parties.

The undersigned is not required to determine the correct-