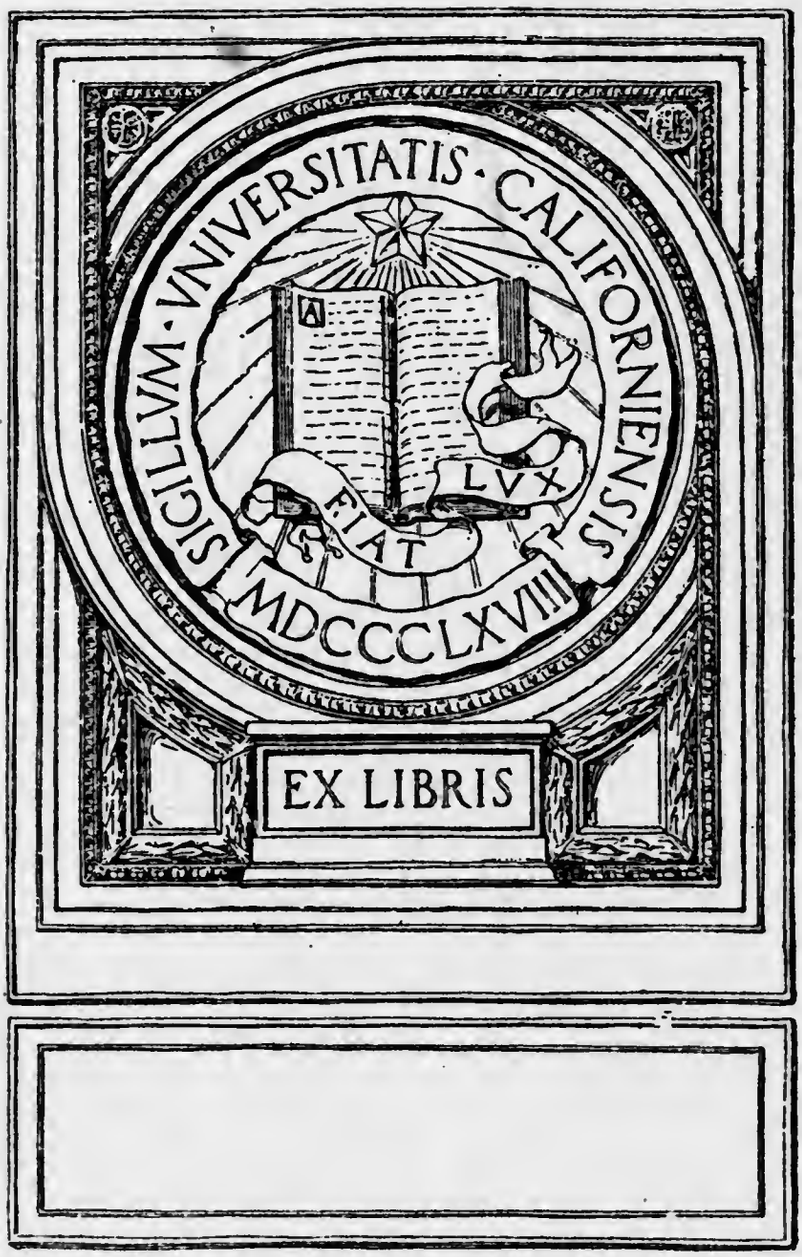
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MARYLAND

TAX DIGEST

BY

A. B. CUNNINGHAM

JUDGE OF THE APPEAL TAX COURT OF BALTIMORE CITY

BALTIMORE:

M. CURLANDER,

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PREFACE.

This Digest of the opinions of the Court of Appeals contained in the Maryland Reports to the year 1914, including 121 Md., is published with the hope that it may be utilized, in a measure, by the tax authorities of the state, and by the legal profession, as a ready reference book of some value.

As will be noted, the subjects are classified alphabetically for convenient reference, and it is hoped that this arrangement will meet with the approval of those who may use the volume.

The Digest is almost necessarily limited in bulk, as the field which it has sought to cover comprises only one general subject. The compiler trusts, however, that those who may have occasion to fully examine its pages, will find that all the vital and momentous tax issues in the state which have found their final settlement in the Court of Appeals have been fairly well presented.

The compiler has endeavored, in digesting a number of the more wide-reaching decisions, to reproduce, in brief, salient passages, the identical language used by the Court, it being quite clear that this would be more illuminative of the judicial meaning than a mere syllabus would be.

In view of the exceptionally important character of the tax legislation passed by the General Assembly at the session of 1914, none of which has yet been given wide publicity, a number of these Acts have been printed in the Appendix to the Digest.

THE FIFTEENTH ARTICLE OF THE MARYLAND DECLARATION OF RIGHTS.

The fundamental basis of taxation in Maryland is Article 15 of the Declaration of Rights. It is the standard by which all the tax legislation of the commonwealth had been measured since 1776. To the Judiciary of the State it has been what the North Star was to the ancient mariner—a never failing guide and monitor. The proviso that "every person in the state ought to contribute his proportion of public taxes for the support of government according to his actual worth in real and personal property within the state" has been from the beginning and still remains the keystone to the great arch of our taxation and revenue system. As will be noted by the student of our Judicial records, the letter and spirit of "Article Fifteen" threads all the important tax decisions of our Court of Appeals. In this connection it is curious, from a historical point of view, to note that in the case of the *Appeal Tax Court v. Gill*, 50 Md. 377, appellant's counsel, Mr. Charles J. M. Gwinn, attributed the inspiration of Article Fifteen to Adam Smith, whose "Wealth of Nations" was first published in the early part of 1776, and in which occurred the following maxim: "The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state." The striking similarity in the language of the two passages would certainly suggest a common origin.

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MARYLAND TAX DIGEST

Abatements. Whenever any person shall make application for an allowance or deduction on account of the sale, transfer, alienation, loss or removal of any property, or the collection or payment of any public or private security for money, the County Commissioners or Appeal Tax Court shall interrogate him on oath in reference thereto and the disposal of the same, and especially inquire of him to whom the same has been sold or transferred, and the amount of the purchase money or the money collected and how the same has been invested. *Code 1911, Art. 81, sec. 16; Baltimore City Charter, secs. 156 and 157.*

Accuracy of Assessments Presumed. Presumptions are in favor of the correctness of assessments. *Consolidated Gas Co. v. Baltimore,* 101 Md. 559.

In accordance with the universal presumption in favor of the regularity and validity of official acts, tax assessments, made in the line of official duty, are presumably correct, and the burden of showing the contrary is upon the person claiming to be aggrieved. Accordingly, it will be presumed that proper notice was given; that a correct method of valuation was used, and that a fair valuation was placed on the property. *27 Amer. and Eng. Enc. of Law* (2d Edition), p. 728. (Quoted by Court in *Con. Gas Co. v. Baltimore,* 101 Md. 559.)

Actions to Recover Taxes. If the appellees are liable to be taxed as owners of the property, a duty has arisen upon

the assessment made to pay the taxes levied, and such duty could be enforced by an action at law, as upon an implied assumpsit notwithstanding the repeal of the Statute of 1876, Ch. 260. *Appeal Tax Court v. W. M. R. R. Co.*, 50 Md. 295.

The failure of the Tax Collector to deliver to the delinquent tax payer an account of his assessment within the time limited by law did not affect the suit for unpaid taxes. *Dugan v. Baltimore,* 1 G. & J. 499.

Whenever the law makes it the duty of a corporation to pay the tax on shares of stock the obligation may be enforced by legal action. *American Coal Co. v. Allegany County,* 59 Md. 185.

To entitle the collector of the county tax to recover in his own right, from a taxable inhabitant, the amount of his assessment, such collector must show that the taxes placed in his hands for collection had been paid over to the persons in whose favor levies had been made, or adduce some proof showing that he had furnished such evidence to the proper tribunal for adjusting his accounts. The circumstance, that an account presented by a collector to the Levy Court, was by that Court, filed in the clerk's office, is no evidence that the Levy Court adopted it. *Hammond v. O'Hara,* 2 H. & G. 111.

Code, Art. 81, Sec. 70, provides that taxes shall be in arrears on the first of January next following the levy, and this section does not authorize a suit against a corporation on shares of non-resident shareholders until the expiration of that time. *Baltimore v. Chester River S. S. Co.,* 103 Md. 400.

A person assessed without notice is entitled to a writ of injunction to restrain the collection of the tax. *Baltimore v. Poole & Son Co.,* 97 Md. 67.

Acts of Tax Officials Must be Within the Law. No person can be taxed without notice by the County Commissioners. When a person is so assessed and he applies to have the assessment set aside the Commissioners have no authority to continue it on their books because he cannot or will not say who is the actual owner of the assessed property. *Baltimore County v. Winand,* 77 Md. 522.

Administrators and Executors—Their Duties as to the Payment of Taxes. Under the provisions of the *Code Art. 81, Sec. 72,* which prescribes that "administrators shall pay all taxes due from their decedents as preferred debts, and to the exclusion of all others, except necessary funeral expenses," executors and administrators are evidently held affected with notice of taxes due upon the property in their custody, and it is their legal duty to ascertain and discharge them, next after funeral expenses, before proceeding to the further administration of the estate. *Bonaparte v. State,* 63 Md. 465.

But while an executor is to be assessed in the city or county where administration is had with personal property there situate, and that of an intangible nature not located permanently elsewhere, it is provided by the *Code, Art. 75, Sec. 88,* that "an executor may be sued either in the county where he resides, or where he obtained administra-

tion." This right to sue in either place is but to facilitate recovery against an executor and does not affect the nature of the demand. *Ibid.*

Taxes are not debts within the meaning of the *Code, Art. 93, Sec. 109.* They are not demands against which a set-off is admissible; nor are they contracts between party and party, either express or implied, but they are the positive acts of the government, binding upon the inhabitants, and to the making and enforcing of which their consent is not required. *Ibid.*

The situs for the taxation of the securities belonging to the estate of the decedent is the place of administration. *Ibid.*

An executor has the right to retain the money to pay a paving tax bill, due for paving in front of decedent's property, and which accrued during his life time. *Handy v. Collins,* 60 Md. 229.

Where the administrator is among the creditors of the decedent his claim must be proved under the provisions of the *Code, Art. 93, Sec. 95,* before being approved by the Orphan's Court. *Watson v. Watson,* 58 Md. 442.

Alienor Liable for Taxes. Where property, after alienation, is allowed to remain on the tax books of the county, assessed to the alienor, and he fails to avail himself of the means provided by law to have the assessment corrected, he is liable for taxes on such property, and they

may be recovered in an action of *indebitatus assumpsit* against him by the County Commissioners. *Frederick County v. Clagett,* 31 Md. 210.

No person shall be chargeable with the assessment of property which he may have alienated, but the same shall be chargeable to the alienee; and the Appeal Tax Court shall, from time to time, correct the account of any person who may have parted with the possession of any property, and the same so taken off shall be charged to the person who may have acquired possession of the property. *Baltimore City Charter, Sec. 166.* Query: Does not this enactment nullify the decision of the Court of Appeals in Clagett's Case, *supra?*

Annex Block Boundaries. A certain block of ground in the annexed territory was bounded on three sides by regular city streets paved and kerbed and on the fourth side by an alley graded and paved throughout its length with cobblestones but without kerbs. Held that this block of ground is bounded by streets and alleys graded and opened within the meaning of the Act of 1902, and the fact that the paving of the alley was in bad condition and that it was not kerbed does not prevent it from being considered as a boundary within the requirements of the statute, and consequently that landed property within this block is subject after the year 1900 to the city tax rate. *Baltimore v. Rosenthal,* 102 Md. 298.

Annex Blocks Exceeding 200,000 Square Feet. The property is situate in that part of Baltimore City known as the Annex, and for the year 1908, it was classified at the full city rate on the assessed value. Said property is situated in an area of ground bounded by Linden avenue, Ducatel street, Bolton avenue (now Brookfield avenue) and Whitelock street; it is agreed that the area bounded by these streets contains 200,660 superficial square feet; that Linden avenue and Ducatel and Whitelock streets are graded, paved and kerbed; that Bolton avenue is a private street, paved with cobblestones and kerbed. It is admitted that the block of ground contains 660 superficial square feet in excess of the number of superficial square feet fixed and prescribed by the Act of 1902, Chapter 130. To subject the property in this block to be taxed at the full city rate, it is urged upon the part of the appellant that this slight excess of 660 feet should be disregarded and ignored by us, and the provisions of the statute waived in favor of the city. We have examined this condition in the light of the facts set out in the record and can find no valid reason why the Court should waive the plain provision of the statute, or disturb the rule established by this Court in its previous decisions in the Annex tax cases. *Baltimore v. Harris*, 113 Md. 228.

In *Baltimore v. Gail*, 106 Md. 686, we said that the Acts of 1888, Chap. 98, and 1902, Chap. 130, have been considered by this Court in a number of cases, but in none of them has the Court evinced the slightest purpose to weaken the force or narrow the scope of their provisions. Those acts prescribe the conditions under which the full

city rate may be imposed, and it can only be imposed upon the conditions therein expressed. It would be not only a hardship upon the taxpayer of the Annex to impose that rate upon other and different conditions, but to do so would be an unwarrantable exercise of the taxing power of the city. *Ibid.*

Lots of ground, in a block exceeding 200,000 superficial square feet, bounded on all sides by streets and paved from kerb to kerb, which exceed 200 feet in depth, are to be classified as rural property. *Baltimore v. Knell,* 111 Md. 583.

Under the Act of 1902, Chap. 130, lots situated in a block of ground in the Annex, one boundary of which is an unpaved lane, is not subject to the full city rate. A private alley running through a block exceeding 200,000 square feet cannot be regarded as a boundary to divide the block into areas of less than 200,000 feet. *Ibid.*

A turnpike road used and graded as a street may be treated as one of the boundaries of a block under the Act of 1902, Chap. 130. *Coulston v. Baltimore,* 109 Md. 271.

Annex Property—When Liable for Full City Rate. The Legislature has defined the class of annex property which shall be liable to the full city rate, and, when it reaches the standard of development required by the statute, it becomes the duty of the Appeal Tax Court to so list, classify or adjust the property upon the tax books in order that it may be liable for the proper tax. In other words, the Legislature has said that the property in the Annex

should be exempt from the payment of taxes at the full city rate for a definite period, but after the year 1900, and when it has sustained a certain stage of development, it should be taxed at the full city rate. When, therefore, property in the Annex reaches the prescribed development it falls within the class of property the Legislature clearly meant should pay the city rate. *Sams v. Fisher,* 106 Md. 167.

Annexation Act not a Contract. The Act of 1902 defining the terms used in the original annexation act of 1888 (annexing certain adjacent territory to Baltimore City) is a constitutional exercise of power and is not open to the objection that it impairs the contract formed by the Act of 1888, since this act was not a contract but a grant of the sovereign power of taxation to the municipality of Baltimore and could be withdrawn or modified at the pleasure of the Legislature. *Joesting v. Baltimore,* 97 Md. 589.

Appeals From Assessments. Under the Act of 1914 all appeals from the assessments made by County Commissioners or the Appeal Tax Court of Baltimore, or because of their refusal to reduce or abate existing assessments, must be to the State Tax Commission and not to the Courts as heretofore provided by *Code 1911, Art. 81, Sec. 18.* If the question involved, however, be one of law and not of fact, appeal may be had to the Courts. See Appendix for State Tax Commission Act.

If the property owner who feels aggrieved by an assessment fails to pursue the remedy pointed out by the *Code,*

Art. 81, Sec. 18, he cannot be relieved in equity save in a strong case. *O'Neal v. Virginia Bridge Co.,* 18 Md. 23.

Chapter 430 of the Act of 1910 granting appeals from the refusal of County Commissioners to abate assessments refers to existing assessments only and such as may properly be made by the County Commissioners from time to time, and not as to such as are made by them when acting as a board of control and review under the law for the general reassessment. *Chesapeake & Potomac Tel. Co. v. Allegany County,* 116 Md. 220.

Every taxpayer is entitled to a full and fair hearing when his property is assessed and before an assessment is increased, and in the Annex to Baltimore City before an increased rate of taxation is imposed; the City Charter and laws of the State afford him ample protection, and when he fails to resort to his remedy he cannot recover taxes paid by him merely because in a suit by the city against another party for a similar tax the law was substantially declared invalid. *Baltimore v. Harvey,* 118 Md. 285.

Chap. 300 of the Act of 1910 authorizes appeals from county boards of control only where the complainant alleges that the property assessed is exempt or that he is not the owner. Under the Act there is no right of appeal to the Circuit Courts on the ground that the value placed on the property is excessive. Under Chap. 430, of the Acts of 1910, appeals may be taken from the refusal of the County Commissioners to abate existing assessments. *Chesapeake & Potomac Telephone Co. v. Allegany Co.,* 116 Md. 223-4.

Under Sec. 170, of the Charter of Baltimore City, the Court of Appeals is not required to review the findings of fact as to the correctness of the valuation of property for taxation. *Baltimore v. Bonaparte,* 93 Md. 156.

The Court of Appeals cannot be required to sit as a board of review to revise the amount of the valuation placed by assessors upon property for taxation, but when the record shows that a valuation has been imposed in a capricious or unwarrantable way instead of by the exercise of judgment, then such valuation would not be an assessment at all. *Consolidated Gas Co. v. Baltimore,* 101 Md. 541.

Assessment for Special Benefits, a Right That has Been Long Exercised. The objection that benefits are not assessable on account of the improvements because a special fund has been appropriated for that object, is fully met by the decision of this Court in *Lauer v. Baltimore,* 110 Md. 447. In that case an assessment in connection with the opening of a street in the Baltimore City Annex was resisted on the ground that the act of 1904, Chap. 247, created a loan of two million dollars which was "to be used only for the purpose of providing the costs and expenses of condemning, opening, grading, paving and kerbing the streets, avenues, lanes, and alleys" of that portion of the city. * * * The present case is controlled by the same considerations. There is nothing in the Act relating to the Fallsway to qualify or restrict the Charter power of the city of the Commissioners for Opening Streets to assess property benefited

by such an undertaking. *P. B. & W. R. R. v. Baltimore,* 121 Md. 504.

The right to assess property in particular localities to the extent that it is deemed specially benefited by local improvements is to be referred to the power of taxation and has been recognized and sanctioned in all the states. The theory on which such assessments is made is that those whose property is thus enhanced, and who thus receive peculiar benefits from the improvements, should contribute specially to defray its cost, 1 *Lewis Eminent Domain,* Sec 5; *Gould v. Baltimore,* 59 Md. 378; *Hagerstown v. Startzman,* 93 Md. 609. The power to make such assessments has been expressly granted to the Mayor and City Council of Baltimore for a long time. *Lauer v. Baltimore,* 110 Md. 447.

The right to make benefit assessments is undoubtedly an exercise of the *taxing power. Gould v. Baltimore,* 58 Md. 46.

In the payment of the assessment thus made, the adjacent owner is supposed to be compensated by the enhanced value of his property arising from the improvements. *Gould v. Baltimore,* 59 Md. 380.

To justify an assessment the improvement must be for a public purpose since the public have no right to tax a citizen to make improvements for his benefit solely. Streets which are opened are public benefits, but the cost of opening and improving them is assessed on adjoining owners on the ground of private benefits. This is the precise ground upon which the power of assessment is placed. *Baltimore v. Hanson,* 61 Md. 465.

Whether an improvement authorized by the Mayor and City Council will benefit the property along the line of such improvement is a question left exclusively to their judgment, and their determination in the premises is final and conclusive. The courts have no power to review such determination at the instance of the property owner specially taxed. *Baltimore v. Johns Hopkins Hospital,* 56 Md. 1; *Moale v. Baltimore,* 61 Md. 224.

The Legislature has the constitutional power to authorize benefits to be assessed and levied by the Mayor and City Council of Baltimore upon property adjacent to, as well as within the limits, of the city. *Brooks v. Baltimore,* 48 Md. 265.

Excessive estimates of benefits derived may be corrected on appeal by a court and jury. *Alexander v. Baltimore,* 5 Gill, 382.

The power of the Legislature to lay special taxes for local improvements, and to impose special assessments for road or street improvements, when not restricted by constitutional provisions, is well settled and is supported by numerous Federal and State decisions. *Leser v. Wagner,* 120 Md. 680.

A special assessment may be levied upon an executed consideration for a public work already done. *Ibid.*

Where a street has been paved, and the property benefited has been assessed under an ordinance subsequently declared void, the Legislature has power to authorize the

city to levy special assessments against such property to the extent of the special benefits derived by the property. *Baltimore v. Ulman,* 79 Md. 482.

Assessment of a Distributed Estate Void. The administrator of an estate in Washington County, having been appointed trustee by the heirs, converted the property into cash and invested the proceeds in mortgages in another state in which he resided. The property thus distributed was reported by the Register of Wills to the County Commissioners, who assessed the administrator for the amount reported. As there was no property remaining in the hands of the administrator, having been distributed by order of the Orphans' Court, before the levy and assessment was made, the tax was illegal and void, and the County Commissioners exceeded their powers. *Nicodemus v. Hull,* 93 Md. 367.

Assessments Generally—How the Power to Make and to Correct and Increase Should be Exercised. The County Commissioners and Appeal Tax Court are directed annually to correct the assessment of the property in their respective counties and the City of Baltimore. The powers delegated are important, and no less important to the property owner than to the public at large; and therefore they should not be attempted to be exercised in an arbitrary or capricious manner; nor exercised in any case without due regard to the rights of the property owner. He must have a right to be heard, and that, too, before his rights are determined

by the only tribunal that can hear him in defense of his rights. *Allegany County v. N. Y. Mining Co.*, 76 Md. 554.

The County Commissioners admit that they fixed the increased valuation in this case before giving notice. This is justified upon no principle of justice, whether in a tax court or any other court, to say nothing of the express injunction of the statute prohibiting such mode of proceedings. * * Therefore the increased valuation of the plaintiff's property was illegal and void. *Ibid.*

If the County Commissioners act within the scope of their authority, and after complying with all the necessary conditions precedent prescribed, such as the giving of the required notice, and the like, their judgment become final, and is not the subject of review by any other tribunal, for the correction of mere informalities or irregularities in their proceeding, which may not involve the question of transcending authority. If, however, they proceed without the warrant of law, their proceedings will be restrained by a court of equity as being illegal and void. *Ibid.*

Where a special authority to levy taxes is delegated it must be strictly pursued. *Kerr v. State*, 3 H. & J. 564.

Though the County Commissioners make the levy on some other day than the one set forth in the statute it is binding, as the statute in that respect is merely directory. *State v. Horner*, 34 Md. 569.

A tax collector, illegally appointed, though he gives bond, is not authorized to act as such official, and all his acts are unlawful. *Burgess v. Pue*, 2 Gill. 12.

If the property is indivisible, so that the value of the several parts, those that are exempt from taxation under the law and those that are not, cannot be ascertained, the amount of the net income (from the academy or school) may be capitalized as the basis of assessment. *Frederick County v. Sisters of St. Joseph,* 48 Md. 42.

Assessments may be made by direct legislative act as well as by the tax officials. *Baltimore v. State,* 105 Md. 1.

In 1903 the Wilkens Company was organized under New Jersey laws and the property of the individual firm of Wilkens & Co. that preceded it was transferred to the corporation. Taxes for the years 1903 and 1904 were paid in the name of the individual firm by the officers of the company. But in July, 1905, upon their request, the assessment was transferred to the corporation and a new assessment was made upon the tangible property of the corporation on a regular form furnished by the assessor and delivered by an officer of the company to the Appeal Tax Court, the valuation given by the appellant being adopted. Later, the officials of the corporation protested against the assessment upon the ground that it was illegal, because the City Charter, Section 171, provides that the valuation of property as it appears on the assessment books on October 1st shall be the basis of the levy for the ensuing year. It appears from the agreed statement that the transfer from the account of Wilkens & Co. to that of the appellant was made at the suggestion of the latter, and, under these circumstances, the appellant is estopped from raising this objection. *Wilkens Co. v. Baltimore,* 103 Md. 314.

Baltimore & Ohio R. R. Taxation and Exemptions—Franchise and Gross Receipts Tax—Contract by State. This suit is brought to recover a tax imposed by the Act. of 1872, Chap. 234, on the gross receipts of all railroads incorporated by, and doing business, in this State; and it is claimed that under Sec. 18, of the Act of 1826, the property and franchises of the Company are exempt from any tax. Sec. 18, of the Act of 1826, incorporating the Baltimore & Ohio Railroad Company, provides "That the said road or roads, with all their works, improvements and profits, and all the machinery of transportation used on said road, are hereby vested in the said Company, incorporated by this Act, and their successors forever; and the shares of the capital stock of said Company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen." There is no provision in the Act or in the then existing State Constitution reserving the right to repeal or amend the charter of the appellee, and the exemption therein granted is a contract between the State and the corporations, *State v. N. C. R. R. Co.*, 44 Md. 162, and therefore beyond the power of a subsequent Legislature to repeal or in any manner impair. In *Baltimore v. Railroad Co.*, 6 Gill, 292, the power to tax the real and personal property of the Baltimore & Ohio Railroad Company, and its capital stock, and its shares of stock in the hands of shareholders, was the sole question before the Court, and all the Judges were of the opinion that no such power existed.

We are of the opinion, therefore, that the gross receipts of the appellees' entire road from Baltimore to the Ohio River, and the gross receipts derived from the lateral roads built by the appellee, and from all buildings and works necessary and expedient to the operation of its road are exempt from the imposition of any tax or burthen. And this, too, whether said road or roads, and buildings, and works were constructed with money derived from the subscription to its capital stock, or from sales of its shares of stock, or from money borrowed, and secured by mortgage, or from the undistributed profits of the Company, or from all these sources combined. *State v. Baltimore & Ohio Railroad Co.*, 48 Md. 70-75.

The buildings, elevators, wharves, piers and docks are necessary for the business of the appellee as a common carrier, for the purpose of receiving and storing grain and freight shipped over its road after the same have reached the place of destination, and previous to delivery to the consignee or owner, and therefore they are exempt. *Ibid.*

But the rights of the appellee in this respect are such as pertain to its functions as a common carrier; and as such, it has no right to own and use these structures for the storage of grain and freight after the owner or consignee has had a reasonable time to remove the same. The Act of 1826 does not authorize the appellee to carry on the business of a warehouseman, and if these structures are owned and used for carrying on a business separate and distinct from

its business as a carrier, then such structures are taxable according to valuation as other real property. *Ibid.*

The Metropolitan Road built under the authority of a Legislative Act of 1865, and not under the original charter, is liable to the gross receipts tax. *Ibid.*

The Act of 1826 confers no power on the appellee to acquire steamship or steamboat lines, and the receipts from these are liable to the tax on such receipts as are earned in the State. *Ibid.*

All bonds of other railroads acquired by the Baltimore & Ohio Railroad Company are taxable according to their market value. *Ibid.*

[Note: In 1878 the General Assembly passed what was known as the "Compromise Act, Chap. 155," by the terms of which the Baltimore & Ohio Railroad Company agreed, in return for the repeal of the Act of 1865 imposing a twenty per cent. State tax on the receipts of the Metropolitan Branch Railroad, to pay the gross receipts tax, then fixed by law at one-half of one per centum. The Company has declined to pay subsequent increases of the gross receipts tax, and suit is now pending to test the State's rights in the premises.]

Bank Taxation—Legislative Acts—Taxing the Property and Capital Stock of a Bank at the Same Time Would be a Double Tax. It is perfectly understood that the stock of a bank is the representative of the whole property; and

when a tax has been laid on the stock in the hands of the shareholders, the real and personal estate of the company becomes exempt from taxation. To tax both the real and personal property, and the stock, would be a double tax, and therefore illegal and unjust. *Tax Cases,* 12 G. & J. 117.

When the contract between the State and banks was entered into in the year 1821, Act of 1821, Chap. 131, Sec. 11, the banks embraced by the statute were subject to a tax of twenty cents on every hundred dollars of the capital stock actually paid in, or which should thereafter be paid in, to be appropriated as a fund for the establishment of free schools; and the stipulation not to impose any further tax "upon them during the continuance of their charters" was intended, we think, to protect the banks against any additional tax for the period of twenty years which might be imposed by the Legislature for State purposes. Under the circumstances of this case, the words "further tax" have no application to the City of Baltimore. And if the object of the contract had been to exempt the banks from all taxation, whether imposed by the State or City, it is impossible to believe that the parties would not have employed more comprehensive terms and have used language better calculated to accomplish their purpose. *Gordon v. Baltimore,* 5 Gill, 239.

It was the purpose of the Act of 1841, Chap. 23, to impose both State and City taxes on the banks. The right of the City to tax the stock, according to the interpretation which we have put upon the contract, remains unaffected by any

constitutional inhibition. It was the intention of the Legislature to subject this property to a City tax. But as to the State tax the Act of 1841 was a violation of the Act of 1821. *Ibid.*

In this case the executor of an estate paid the tax on bank stock to the City of Baltimore under a judgment obtained in the Baltimore County Court. Subsequently, the executor brought an action of assumpsit to recover. It is an established principle, and not disputed by counsel for appellant, that money paid on an execution issued upon a judgment of a Court of competent jurisdiction, cannot be recovered back, although it was afterwards discovered that the money was not due, and the party is in a situation to prove the fact. *Ibid.*

Being of the opinion that to tax the property of the bank and its capital stock at the same time would be double taxation, forbidden by our organic law, we cannot construe the Act of 1876 as authorizing such double taxation. In the case of a corporation chartered by the State it could not be tolerated or enforced; and the appellee is entitled to be protected against such an exaction. Under the Revised Statutes of the United States, the State is left free to exercise the power of taxation of national banks, assessing the same upon the real property of the bank, or upon the shares of the capital stock, at the election of the State, in accordance with our own Constitution and laws, and, only in conformity with the rules applicable to the citizens and corporations of the State. *Frederick County v. Farmers' and Mechanics' National Bank*, 48 Md. 120.

The shares of stock and the personal property of a foreign corporation, owned by residents of Maryland, is not double taxation, and therefore is not unconstitutional. The tax on shares is a tax on the owners, and the tax on the tangible property of a corporation is a tax on the corporation. *Wilkens Co. v. Baltimore,* 103 Md. 312.

The fact that the personal property of Maryland corporations is exempt from taxation, only the shares being taxed, does not invalidate a tax on the personal property of a foreign corporation, as the State has full power to exempt any class of property as it may deem best according to its views of public policy. *Ibid.*

For the recovery of the tax on the stock of the bank, the State has no lien on the stock; it can maintain no action at law against the stockholders nor against the bank; nor against any officer of the bank in his official character. Nor can it maintain an action for money had and received against any officer of the bank in his individual character. Yet, under the Act of 1843, we are of the opinion that it has a clear and unquestionable right to be paid out of the dividends declared, the amount of the tax imposed on the assessed value of the stock of the bank. *State v. Mayhew,* 2 Gill, 503.

Where an Act of the Legislature prescribed the method for valuing bank stock, and the rate of taxation, it is a legislative levy, without regard as to who may be the share owners. *Ibid.*

Code, Art. 81, Sec. 214, does not constitute an illegal discrimination against national banks under Sec. 5219 of the Revised Statutes of the United States, it not appearing that this section in its practical operation resulted in relieving the capital of private firms from equal taxation, and all domestic incorporated banks and trust companies being taxed at the same rate. *National Bank of Baltimore v. Baltimore,* 92 Fed. 239. (Affirmed in 100 Fed. 24.)

Benevolent Institutions Entitled to Only Such Exemptions as Are Specifically Granted. The bill in this case was filed to obtain an injunction to restrain the collection of taxes from the appellee, upon the ground that the property upon which the taxes were assessed had been exempted from taxation by law. The appellee is a benevolent institution and is the owner of what is known as "The Masonic Temple," a building located in the City of Baltimore. It is only the upper portion of this building that is used by the appellee for the purposes of the lodge, and the lower portion has been constructed into storerooms and halls. and as such rented out and used, and the revenue derived therefrom has been received and applied to the purposes of the association. It is upon the capitalization of such rentals that the assessment in question has been made, and not upon the whole building itself; but the rate of such capitalization does not appear. * * * *

By the Act of 1876, Chap. 260, sec. 2, the buildings of charitable or benevolent institutions, so far as used for their corporate purposes, and the ground upon which such build-

ings stood, were exempt from taxation; and under that exemption, and in respect to this same building, the Court held, in *Appeal Tax Court v. Grand Lodge*, 50 Md. 421, that to the extent of the rentals received the appellee was liable to taxation. And we have not been able to perceive anything in the subsequent legislation to relieve the appellee from that liability. *Baltimore v. Grand Lodge of Masons*, 60 Md. 280.

The right of taxation is never presumed to be relinquished; and before any party can rightfully claim an exemption from the common burden, it is incumbent upon that party to show affirmatively that the exemption claimed is authorized by law. If there be a real doubt upon the subject, that doubt must be resolved in favor of the State; and it is only where the exemption is shown to be granted in terms clear and unequivocal that the right of exemption can be maintained. *Ibid.*

This case is strictly analogous to, and falls directly with the principle of *Proprietors of Meeting House v. City of Lowell*, 1 Met. 541, and which was quoted with approval by this Court, in deciding the case of *Frederick County v. Sisters of Charity of St. Joseph*, 48 Md. 34. In the case thus quoted with approval, the exemption was, by the terms of the Statute, of "all houses of religious worship, and the pews and furniture within the same." The plaintiffs were authorized to purchase a site for a meeting house, and to erect such house thereon. They erected a building, the upper story of which was divided into pews, and furnished for religious purposes, and the lower story was fitted up as stores.

And such being the nature of the property, it was held that the exemption of the statute extended only to that part of the property which was used as a place of worship, and for purposes connected therewith; and, as to the part of the building devoted to the stores, that was held liable to be taxed as other property. That case, assuming it to have been rightly decided, would seem to be quite conclusive of the present. *Ibid.*

"**Block of Ground.**" The Act of 1902, Chap. 130, declares what shall be "landed property," within Sec. 19, Chap. 98, of the Acts of 1888, and distinctly provides that a "block of ground" shall be construed to mean an area of ground not exceeding two hundred thousand superficial square feet, formed and bounded on all sides by intersecting avenues, streets or alleys, opened, graded, kerbed and otherwise improved from kerb to kerb by pavement, macadam, gravel or other substantial material. *Sindall v. Baltimore,* 93 Md. 534; *Sams v. Fisher,* 106 Md. 155; *Hiss v. Baltimore,* 103 Md. 621.

The Act of 1888, Chap. 98, as amended by the Act of 1902, Chap. 130, prescribes the conditions under which the full city rate may be imposed, and it can only be imposed upon the conditions therein expressed. It would be not only a hardship upon the taxpayer of the Annex to impose that rate upon other and different conditions, but to do so would be an unwarranted exercise of the taxing power of the City. *Baltimore v. Gail,* 106 Md. 686.

The block not being subject to the full city rate, there was no authority in the Court to carve out certain portions of it and impose the full rate merely because the owners of certain portions of the block had paved, in the manner shown by the evidence, certain private alleys for the convenience of their lots. Such a construction would produce a condition which the Legislature could never have contemplated. *Baltimore v. Schafer,* 107 Md. 38.

It would be exceedingly dangerous where the law is specific and plain, as in this case, as to what constitutes a block of ground, and the amount of the superficial square feet fixed by the statute is certain and definite, for the Courts to ignore and to waive the plain provision of the statute, as urged here. It would practically make uncertain that which the statute and the decisions of this Court have settled and made certain. *Baltimore v. Harris,* 113 Md. 231.

Bonded Indebtedness not Taxable. The bonded indebtedness of a corporation, under the Maryland statutes, does not constitute any part of its assessable property. *Consolidated Gas Co. v. Baltimore,* 101 Md. 541.

Bonds of B. & O. and N. C. Railroads Taxable. The appellees insist that the bonds of the Baltimore & Ohio Railroad Company and the Northern Central Railway Company are exempt from taxation because they represent the share or part of certain mortgages on the property of the aforesaid railroads held by the appellees. It is not alleged that the bonds for which exemption is claimed are secured by

mortgage, by property within the State, but it is admitted that the mortgages, securing the same, include property within and without the State. Without inquiring into the reason of the discrimination between mortgages on property within and without the State, it is sufficient to say, the bonds assessed in this case do not come within the terms of the exemption, and it is an unyielding rule of law, that exemptions claimed under legislative Acts, should be rigidly construed and established beyond reasonable doubt. *Appeal Tax Court v. Gill,* 50 Md. 395.

Bonds of Tax Collectors — Liability of Sureties Thereon. The fact that the collector was a defaulter at the time of his reappointment, for taxes collected by him in previous years, and that this information had not been imparted to them by the County Commissioners who made the reappointment, cannot be pleaded as a defense on an action on the bond. *Frownfelter v. State,* 66 Md. 85.

The sureties on a tax collector's bond cannot plead that their principal had no legal title to the office of collector, or that he was responsible for the conduct of such office. *Ibid.*

Under the Act of 1794, Chap. 53, a surety on a tax collector's bond cannot defend himself on the ground that the required oath had not been taken by the collector. *Laurenson v. State,* 7 H. & J. 339.

When the County Commissioners give an order, drawn on a proper fund, directing the collector to pay a certain sum to a third party, and the collector promises to pay it

but fails to pay it, his sureties are liable for the amount. *Fidelity Co. v. Charles County,* 98 Md. 163.

Bonus Tax on Capital Stock. A corporation cannot maintain an action for libel before its bonus tax is paid. There is no legal existence to a corporation until its bonus tax has been paid. *National Shutter Bar Co. v. Zimmerman,* 110 Md. 317.

A party sued by a corporation which has not paid the bonus tax may plead that fact in bar of further proceedings. The corporation cannot maintain its action by paying the tax after suit has been brought. *Maryland Tube Works v. West End Imp. Co.,* 87 Md. 210.

A subscription to the stock of a corporation which has not paid its bonus tax is a nullity, unless the subscriber chooses to ratify it after the tax has been paid. *Murphy v. Wheatley,* 102 Md. 504; *Cleaveland v. Mullin,* 96 Md. 603.

Book Values Improper Criterion for Valuing Securities. The book value alone of shares of stock is neither a safe nor a true measure of their actual value. *Schley v. Montgomery County,* 106 Md. 411.

Boundaries—An Alley Need not be Kerbed to Make it A Boundary. This is an appeal from a decree which perpetually enjoined the appellant from levying taxes for municipal purposes against the appellee, as the owner of certain property in the City of Baltimore, at a rate in ex-

cess of sixty cents per one hundred dollars. The property is in the block bounded by Whitelock street, North avenue, Eutaw place and Madison avenue. There is an alley known as Morris alley running from North avenue to Whitelock street about midway between Eutaw Place and Madison avenue. Appellee contends that his property is not subject to the city rate of taxation because Morris alley is not paved within the meaning of the Act of 1902, and that it has no kerbs as required by that act. The evidence abundantly shows that the alley was opened, paved and graded within the meaning of the act. The fact that the paving is in bad condition would not justify this Court in declaring it not to be embraced within the meaning of the statute. * * It would be remarkable if the Legislature intended that the mere failure to place kerbstones either on the outside limits, or within those limits, should have the effect contended for in this case. * * To hold that all alleys must be kerbed in the way streets usually are, would, in many instances, destroy the usefulness of alleys. * * The decree of the lower court will be reversed and the bill dismissed. *Baltimore v. Rosenthal,* 102 Md. 298.

In the present case there is no kerbing, consisting of a line of stone, set in the ground in a vertical position, but that which is substituted for it, is, for the purposes of the Act of 1902, Chap. 130, to be regarded as the kerb of the street. It could not have been the intention of the Legislature, nor can it be within the meaning of the Act, that the property upon a street or avenue paved and improved in the manner adopted by those interested in the development of it, and

paved and improved to the same extent as if the kerbstone, and not the rebut, had been used, should be perpetually exempt from taxation at a rate to which it would otherwise be liable had the kerbstone been used. *Smith v. Baltimore,* 120 Md. 151.

This is not the first time this question has been before this Court. In the case of *Baltimore v. Rosenthal,* 102 Md. 298, the Court was called upon to decide whether or not an alley not kerbed could be regarded as a boundary of a block. Judge Boyd, in speaking for the Court, said: "If it be true that this alley was paved with cobblestones from its eastern to its western limits, it would be remarkable if the Legislature intended that the mere failure to place kerbstones, should have the effect contended for in this case. It is neither necessary nor usual to kerb an alley used for such purposes as this one. *Streets* are sometimes paved from building line to building line with vitrified brick, or other material, without any kerbstone, and yet it cannot be possible that the mere absence of kerbstones was intended to result in exempting property in the Annex from the paying of taxes at the regular rates, simply because there was no kerbstones, although the street in all other respects was improved as required by the statute." This case, in our opinion, is decisive of the question here presented. *Ibid.*

A turnpike road, graded as a street, and so used, may properly be regarded as one of the boundaries of landed property in the Annex under the Act of 1902, Chap. 130. *Coulston v. Baltimore,* 109 Md. 271.

It is not provided in the Act of 1902, amendatory to the Act of 1888, that such streets, avenues and alleys shall be *public* and not private as claimed by the appellant, although since the passage of the Act of 1902 this Court had held in *Coulston v. Baltimore,* 109 Md. 271, that it was not essential to the right of the city to impose the full tax rate that the streets and avenues bounding the block should be *public* and not private. *Smith v. Baltimore,* 120 Md. 149.

Bridges—Taxation of. Bridges across streams in Maryland are taxable in the county in which they are situated, though the corporation owning the bridge has its principal office outside the State. *O'Neal v. Virginia & Maryland Bridge Co.,* 18 Md. 21.

Building Association Exemptions. As to the exemption of the shares of homestead and building associations represented by mortgages of land, the character of those associations, which are not intended to be money-making corporations, is such that the exemption cannot be considered as arbitrary. *Simpson v. Hopkins,* 82 Md. 490.

The Act of 1896, Chap. 120, providing for the taxation of mortgage debts, does not include the mortgages of building associations, since the amount advanced under such a mortgage by the association to a member upon the value of his shares of stock is not a debt secured by mortgage in the sense in which that word is used in the Act, and the exemption of building associations from taxation by the *Code*

Art. 23, Sec. 99, is not repealed by the Act of 1896. *Faust v. Building Association,* 84 Md. 186.

Burden of Proof in Tax Appeals. The rule regulating the burden of proof in special judicial proceedings is the same that governs where an issue has been formulated by the pleadings. He who asks affirmative relief, one for example who appeals from an order * * * has the burden of convincing the Court that action should be taken in his favor. 16 Cyc. 931. Quoted by the Court in *Baltimore v. Hurlock,* 113 Md. 677.

Capital Stock Tax is a Tax on the Shareholders. It has been repeatedly held by this Court that the tax upon the capital stock is not a tax upon the corporation, but upon the owners of that stock, the corporation being made the medium through which the tax is collected. This is in strict accord and analogy with the case of the *Monticello Co. v. Baltimore,* 90 Md. 416, in which McSherry, C. J., in speaking of the distilled spirits there sought to be taxed in the hands of the warehouseman, says: "Though the language employed, like that used in many other assessment laws, if read literally, would indicate an intention to impose the tax on the property and not on the owner of it, that is not its meaning when considered in connection with the settled policy of Maryland as announced in the Declaration of Rights. We hold, then, that the tax is upon the owner of the spirits and not specifically upon the spirits." *Union Trust Co. v. State,* 116 Md. 375. See also *Am. Coal Co. v. Allegany County,* 59 Md. 185.

Cattle. Cattle purchased out of Maryland and brought here to be exported are assessable here; they are not taxed as exports, but as part of the general mass of property in the State. *Myers v. Baltimore County,* 83 Md. 387.

The assessment of cattle brought to this State for shipment to foreign countries does not constitute the levying of a duty on exports. *Ibid.*

Just as the stock of goods, carried by merchants, is taxed at the average value, so a stock of cattle is taxable as property within the State in the same way. *Ibid.*

Cemeteries not Exempt From Paving Tax. The exemption of a cemetery from taxation does not exempt it from the payment of a paving tax levied by the municipality. *Dolan v. Baltimore,* 4 Gill, 395.

Cemetery Improvements not Subject to Taxation. The charter of the Baltimore Cemetery Company, granted by the Legislature, provided that "the land of the Company dedicated to the purposes of a cemetery, is declared not to be subject to taxation." It is contended that the exemption does not include the improvements, because the Act of 1876 requires assessors, in valuing real estate, to "separately value the improvements thereon." But this requirement was not designed to convert the improvements into personalty, or to separate them from the realty. In our judgment, the exemption of the lands from taxation necessarily embraces also an exemption of the permanent im-

provements thereon (being gate houses, etc.) which are essential to the use and enjoyment of the land for the purpose contemplated in the charter. *Appeal Tax Court v. Baltimore Cemetery Co.*, 50 Md. 435.

Church Property Sold After Time of Assessment. On October 1, 1901, the lot and building at the corner of Fulton and Pennsylvania avenues, Baltimore, was owned by a church, being exempt from taxation. On November 8, 1901, it ceased to be used as a church, John Jenkins having purchased it. On December 27, 1901, the Appeal Tax Court assessed the property for 1902 to Jenkins at $1,700. He appealed to the City Court, contending that he could not be taxed on the property for 1902 as on the first of October, 1901, it was exempt under the law. That contention was sustained by the lower court. *Held,* That under Sec. 171 of the City Charter, no property other than corporate property not subject to taxation on October first in each year can enter into the taxable basis for the ensuing fiscal year though it become subject to taxation on the next day. The point of time and the rule of law which control are alike arbitrary, and necessarily so, but are none the less final and conclusive, without authority and without argument. The power given in Sec. 171 to assess after October first "property escaped or omitted," is confined to property which was the subject of taxation on October first. *Baltimore v. Jenkins*, 96 Md. 195.

Coal Tax Unconstitutional—Capital Stock of Mining Companies—Uniformity of Tax Burdens Required. The

Act of 1872, Chap. 274, provided that it shall not be lawful for any coal mining company in this State to transport any coal mined in the State, to be sold, until a state tax of two cents per ton *on said coal* had been paid as provided for in the Act. This suit is for the recovery of the amount of the tax on the coal transported by defendant. The Act makes no discrimination between that portion of the coal that may be transported to places within the State for sale and that portion transported beyond the State for sale. As to all such portions of the coal as may be transported beyond the limits of the State for sale, the tax would plainly appear to be an interference with and a restriction over interstate commerce, and hence in contravention of that provision of the Federal Constitution which gives to Congress the power to regulate commerce among the several states. * * * Without saying more in regard to this question, we are of the opinion that the Act of 1872, Chap. 274, so far as it affects to impose the tax upon coal transported from the mines in this State to places beyond the State for sale, is unconstitutional and void. *State v. C. & P. R. R.*, 40 Md. 48.

The State is at liberty to tax her internal commerce, but if an Act to tax interstate commerce be unconstitutional it is not cured by including in its provisions subjects within the taxing power of the State. This is explicitly decided by *R. R. Co. v. Pennsylvania,* 15 Wall, 276, 277. *Ibid.*

The Act of 1872 is violative of Art. 15 of the Bill of Rights, in that it is a direct and specific tax upon coal, and,

therefore, a tax upon property. It is not assessed with reference to any uniform value of the coal, nor in conformity to any rate of taxation imposed upon others' property in the State. It is, therefore, a specific, arbitrary tax on a part of the personal property of the State, without regard to value, uniformity or equality. *Ibid.*

The capital stock of the mining companies of the State is liable to taxation according to a fixed and certain rate; the payment of the tax on the capital stock exempts from taxation all the property, both real and personal of the company. Though the State may elect to tax either the capital stock, or the real and personal property of the company, yet it cannot tax both; whichever it elects to tax, such property must be assessed to an equal and uniform rate, in proportion to its value, as all other property in the State. *Ibid.*

All must bear their burden alike. It is not competent for the Legislature to discriminate as between the different species of property and to tax some by one rule and some by another. *Ibid.*

Collateral Inheritance Tax. A non-resident decedent being entitled to a one-fourth interest in the personal estate of a deceased brother in this State, letters of administration on his estate were taken out in Maryland. The administrators received sundry stocks and bonds which were held by them for delivery to the residuary legatee, resident of the State in which decedent died, there being no lineal descendants. Held that under the *Code 1888, Art. 81, sec. 102,*

a collateral inheritance tax on the value of said personal property was payable to the State of Maryland. *State v. Dalrymple,* 70 Md. 305.

There can be no doubt that the Legislature has the power to impose a collateral inheritance tax, not only where it affects citizens of the State, but also where non-residents or aliens claim by inheritance or by will, property located here. Every State in the Union has the authority to regulate by law the distribution of an intestate's property situated within the jurisdiction of that State. *Ibid.*

One of the conditions upon which strangers and collateral kindred may acquire a decedent's property, which is subject to the dominion of our laws, is that there shall be paid out of such property a tax of two and a half per cent. into the treasury of the State. *Ibid.*

There is not the slightest doubt as to the constitutionality of the collateral inheritance tax law. *Tyson v. State,* 28 Md. 585.

A resident of Baltimore left a large estate to trustees to hold in trust for his wife, with power to the wife to devise the property on her death as she might wish. The widow died and left a will which bequeathed the whole estate to a charitable institution. It is plain that upon the probate of the will of the widow, she having executed the power vested in her by her husband's will, the estate thereupon became subject to the collateral inheritance law. *Fisher v. State,* 106 Md. 120.

The collateral inheritance tax is upon the value of the property, not at the time of the testator's death, but at the time it is transferred to the beneficiary. *Ibid.*

If an administrator or executor of an estate pays out money to a legatee, and does not retain the collateral inheritance tax the State may recover from such legatee. *Montague v. State,* 54 Md. 483.

Contract Between State and Corporation Providing for Limited Exemption From Taxation—Power of Legislature to Repeal. This appeal presents the important question whether so much of the Act of 1880, Chap. 16, as granted to the appellee an exemption from taxation on the gross revenues from its property in Maryland, beyond the annual rate of one-half of one per cent. was subject to repeal by a subsequent Legislature. If it is determined that the Act was subject to repeal, then the further question arises whether it was in fact repealed by the Act of 1890, Chap. 559, which imposes a tax of one per cent. per annum on the gross receipts of all railroads in the State operated by steam. The appellee enjoyed the exemption of its property in Maryland from taxation, thus secured to it by the Act of 1854, down until 1866, when the Legislature passed a general assessment law, which provided for the assessment of all property in the State, and also repealed in general terms all laws exempting property from taxation. Then followed the Act of 1872, which imposed a tax of one-half per centum upon the gross receipts of steam railroads. Under the last mentioned law a tax was levied on the appellee of one-half

per cent. of the gross receipts of its Maryland property for part of the year 1872 and all of the year 1873. This tax the appellee refused to pay and the State brought suit to recover it, and the judgment being against the State it brought the case here on appeal, and it is reported in 44 Md. 131 (*State v. N. C. Ry. Co.*). This Court held the appellee to be liable for the tax and reversed the judgment of the lower Court. * * *

Then followed the Act of 1880 and 1890, the latter raising the annual rate of tax upon the gross receipts of steam railroad companies to one per cent. The appellee paid the increased rate of tax upon the gross receipts of its property in Maryland, under protest, until 1896, when it refused to do so any longer, and the present suit was brought to recover the tax for 1896. The Court below declared that the Act of 1880 constituted a contract irrepealable without the consent of the appellee, by which it was exempted from paying more than one-half per cent. tax upon its gross revenue, from which verdict the State appealed. It is clear that the Act of 1880 and its acceptance by the appellee in this case did not constitute a contract between it and this State, which a subsequent Legislature could not repeal, because the Constitution of 1851, which was in force when the Act of 1854 was passed, would have prevented the General Assembly of 1880 from making an irrepealable grant of the exemption from taxation. *State v. N. C. Ry. Co.*, 90 Md. 470.

As to the question of whether the Act of 1890, Chap. 559, repealed the exemption from taxation, we think that the

exemption was so repealed, both because the language of the repealing clause contained in the later act was broad enough to cover it, and because of the plain inconsistency of the provisions of the two Acts. *Ibid.*

Corporate Property not Liable to Distraint for the Payment of Taxes on Shares of Stock. The Southern Development Company, of Hagerstown, is a body corporate. It was charged on the assessment books of Washington County with county taxes on the shares of its capital stock. The taxes being unpaid for the year 1895, the Collector levied on its real estate and subsequently sold the same to satisfy the amount claimed to be due, not on the property sold, but on the shares of its capital stock owned by its stockholders. The ratification of the sale was objected to on various grounds. The sale was finally set aside by the Circuit Court and the Tax Collector then took this appeal. By. *sec. 141, Art. 81, of the Code,* as amended by the Act of 1896, Chap. 120, it is in substance provided that the taxable value of the capital stock of banks, corporations and joint stock companies shall be ascertained by deducting the assessed value of the real estate owned by the bank, corporation and joint stock company from the aggregate value of all the shares and by then dividing the residuum by the number of the shares of the capital stock; and the quotient is then declared to be the taxable value of each share for taxation by the State. It is further provided by the same section that this valuation shall be certified to the County Commissioners of the Counties and the Appeal Tax Court of Baltimore, by the State Tax Commissioner, and that the taxable value of

such shares owned by residents of this State shall, for county and municipal purposes, be valued to the owners thereof in the county or city in which such owners may reside. The section then provides that said taxable values of such shares of stock shall be collected from such bank or corporation and when so paid shall be charged to the account of the stockholders. * * * *

Though the statute prescribes that the tax shall be collected from the corporation it nowhere authorizes a distraint to enforce that collection. The power to distrain and sell for non-payment of taxes is given by other sections of the *Code, Art. 81, sec. 49, et seq.*, but it is obvious these sections have no relation to this particular and peculiar provision imposing on the corporation the duty to collect for the State and the counties the tax payable by the shareholders on the capital stock owned by them. This is made perfectly clear by reference to the Act of 1900, Chap. 244, which adds *sec. 88a, &c.*, to *Art. 81 of the Code.* By that Act a remedy is provided against the corporation if it shall neglect to pay the *State* tax due by the shareholders on their shares of the capital stock and the remedy thus provided is by suit against the corporation for the amount of the tax and a further sum added by way of penalty. It is hardly supposable that an express enactment prescribing a suit at law would have been passed if the right to proceed in the most speedy and summary way by distress existed. The sole liability of the corporation grows out of a statutory duty to collect, and not out of its failure to pay a tax primarily due by it. The corporation owes the money to the county

not as a taxpayer, but as a tax collector, and the prescribed proceedings against the one is not available against the other. Until a judgment is obtained against the corporation and an execution is issued thereon, the property owned by the corporation cannot be sold for the payment of the amount due to the county as the tax on the shares owned by the stockholders. A sale thus made would be a sale by the sheriff in view of legal proceedings and not a sale by the Tax Collector. *Hull v. Southern Development Company,* 89 Md. 9.

Corporation Bonds Secured by Mortgage on Property in This State Taxable. The appellee (City Collector of Baltimore) sued to recover taxes for three years alleged to be due on certain bonds of the Consolidated Gas Company owned by the appellants. It is admitted that these bonds are secured by a mortgage upon the property of the corporation wholly within this State. It is contended by the appellee that the bonds are liable to taxation under the *Code, Art. 81, sec. 88,* which provides that "all bonds and certificates of debt bearing interest, issued by any railroad or other corporation of this State, secured by mortgage of property wholly within the State, shall be subject to assessment and taxation to the owner or owners thereof in the same manner as like bonds or certificates of debt bearing interest and secured by mortgage of property and partly in some other state or states are now subject to the laws of this State." Sec. 4, of the same Article, provides that Sec. 88 shall not apply to individual mortgages upon property wholly within the State nor to the mortgage debts secured thereby. The

appellants contend that the bonds are not liable to taxation because Sec. 88 is unconstitutional in that it discriminates between mortgages by corporations and individuals. It has been settled that the Declaration of Rights constitutes no bar to the right of the Legislature to exempt certain kinds of propery from taxation when that exemption is not an arbitrary discrimination in favor of a particular class. *Simpson v. Hopkins,* 82 Md. 489.

We cannot consent to the proposition that the taxation of the bonds of a corporation secured by mortgage, while the debt of an individual so secured is exempt, is an arbitrary discrimination against corporations or the holders of corporate securities. An individual's true worth for the purposes of taxation consists of his real and personal property, but in the case of a corporation its franchise, its borrowing power, its earning capacity, its real worth are not represented merely by its visible property and shares of stock. The taxable value of a corporation is its bonded indebtedness together with its stock. See *State Tax Cases,* 92 U. S. 605. Unless the discrimination be arbitrary, the wisdom of the exemption within the discretion of the Legislature is not subject to control by the courts. *Ibid.*

Nor can the alleged exemption of the bonds of a corporation, which do not bear interest, be regarded as arbitrary discrimination. The difference between a security that produces interest and one that does not, and the reasons for the taxation of the one and the exemption of the other are both clear and obvious. The true test of a taxable value is the producing value to the owner. *Ibid.*

While there is no provision in terms for the taxation of bonds secured by mortgage upon property partly within and partly without the State, yet there can be no doubt that such bonds are liable to taxation under the provisions of *Code, Art. 81, sec. 2,* which provides for the taxation of "all bonds made or issued by any territory or corporation belonging to residents of this State, all investments in private securities of every kind and description belonging to residents of this State, and all other property of every kind, nature and description within this State." *Ibid.*

Corporation's Failure to Withhold Taxes. Where the corporation does not withhold from the stockholders the tax due on the shares of their stock (that were to be retired) the corporation is itself liable for the taxes due the State upon such shares. *Union Trust Co. v. State,* 116 Md. 378.

Corporations' Ground Rents Not to be Classed as Part of Its Real Estate Within the Meaning of the Legislature. The Act of 1880, Chap. 20, amending the *Code, Art. 81, sec. 151,* as re-enacted by the Act of 1878, Chap. 178, provides that the president or other proper officer of every corporation, formed under the laws of this State or doing business therein, shall furnish a true statement of any real property which it shall own or possess to the County Commissioners or the Appeal Tax Court of Baltimore City, according to the location of said property, and such real property shall be valued and assessed by the said Commissioners or Tax Court, respectively, to the said corporation, and they

shall give duplicate certificates of such valuation and assessment to such president or other officer, who shall transmit one of such certificates, with his return of stock, to the State Tax Commissioner, and taxes shall be paid by such corporation on such assessment in the same manner as the same are levied upon and paid by individual owners of real property in such county or city, and that the Tax Commissioner shall deduct the assessed value of such real property from the aggregate value of all the shares of stock of such corporation and divide the residuum by the number of shares of the capital stock, and the quotient shall be the taxable value of such respective shares of stock. It is contended by the appellee that its reversionary interest in fee in certain parcels of land in Baltimore City demised by it to various tenants, under leases for 99 years, renewable forever, brings it within the statutory provision just cited, and should have been deducted from the valuation made by the Tax Commissioner of its capital stock, as being real estate of which it is the owner; and, further, that the taxes upon the full value of said lands having been paid by its lessees, not to deduct the value of such interest from its capital stock would be in effect to subject it to double taxation. * * *

In our construction of the law, the appellee is not to be considered an owner of real estate within the contemplation of the Act of Assembly, nor within the proper significance of those words as used in connection with the established tax system of the State. Those corporations only are to be regarded as owners of real estate, the valuation of which is to be deducted from the valuation of their stock, to whom

the land is directly assessable, and who are primarily chargeable with the taxes thereon. It is only when a corporation is thus liable for the taxes on real property that the law relieves its stock as representative of that property. The relation between the land and the stock must be thus direct. It is not such taxation as may incidentally burden the resources or reduce the profits of corporations, and incidentally affect the market value of their stock for which it is the design or policy of the law to allow an abatement. *Baltimore v. Canton Company,* 63 Md. 234.

It is not compatible with public convenience and the prompt collection of revenue for the State to trace out all the sub-divided or qualified interests that may be held in real estate, and seek to hold the various owners responsible. Its policy is to assess the fee simple value of the land to the holder of the possession, where its real owner is not apparent or accessible, leaving the parties interested to adjust the proportions of liability between themselves. This general principle is stated in *Burroughs on Taxation*, 223, as follows: "It is the fee simple in land that is assessed. The law does not regard the different interests in the assessment. It looks to the person having the present right of enjoyment, whether the tenant for life or years, for the tax on the fee simple value of the land, and such person is the one to be assessed with the land." *Ibid.*

This policy is recognized in the Act of 1812, Chap. 91, sec. 36, and with specific reference to leasehold estates. As incorporated in the *Code, Art. 81, sec. 73,* Act of 1874, Chap.

483, sec. 65, it enacts: "The tenant or person holding the leasehold estate shall pay to the collector of taxes levied on the demised premises, and shall have his action against the landlord for the sum so paid, or may deduct the same out of the rent reserved, unless otherwise agreed between the lessor and lessee." By the force of this provision, the lessees of the appellee, and not the appellee itself, are the owners of the land in question and for the purposes of taxation. *Ibid.*

The landlord's interest in the land is but a form of money investment, analogous to that secured by a mortgage. And when a corporation invests money in a mortgage, the exemption of the mortgage debt from taxation does not exempt the shares of stock of the corporation to the extent of such investment. *Emory v. State,* 41 Md. 58. Nor is it double taxation to tax the mortgagor on the full value of the land he has mortgaged, and a corporation mortgagee on the full value of its stock, when the mortgage is not exempt, as in the case of building association mortgages. *Appeal Tax Court v. Rice,* 50 Md. 319. *Ibid.*

The Tax Commissioner is a ministerical officer only in making the abatement from the valuation of its capital stock of the valuation of the real property of a corporation. He acts solely upon the assessment of such real property, as made by the County Commissioners or Appeal Tax Court, evidenced by their certificate to be furnished the president or other proper officer of the corporation, and by such officer to be transmitted to him. The appellee took no steps to

enforce the delivery of such a certificate, which the statement of facts sets out was not furnished, or to appeal from the assessment said to have been made; and the Tax Commissioner had no power but to certify to the Appeal Tax Court the assessed taxable value of its shares of stock, as he had ascertained and affixed it. *Ibid.*

Corporation Mortgages not Exempt. The words of the Act of 1870, Chap. 394, are "nor shall any tax of any kind be assessed, levied or collected on any mortgages of any kind, or on any mortgage (or) bill of sale, upon any property in this State." We think, in passing this Act, the Legislature designed only to exempt from assessment and taxation the *mortgage debt, as such.* The words refer to the instrument, *the mortgage itself,* and declare that *it* shall not be subject to taxation. To construe the law otherwise will exempt from taxation the capital stock of all corporations, to the extent that their loans may be secured by mortgage. The law subjecting the capital stock to taxation, makes no such exemption. * * * The Act exempting mortgages must be held to apply only to the mortgage securities themselves, and has no application to the taxation of the capital stock of corporations, whether it be assessed at its par value or at its actual market value. *Emory v. State,* 41 Md. 58.

The mortgages intended to be exempted by the Act of 1876 were mortgages upon property securing mortgage *debts.* Such a conveyance usually contains a covenant to repay, which raises a personal obligation on the part of the mortgagor; the exemption in question only extends to, and

embraces mortgages and mortgage debts of this description. *Appeal Tax Court v. Rice,* 50 Md. 316.

Corporation Statements—Date of Filing. As the law formerly stood, there was quite a range of time within which a corporation might select such date as it saw fit for making up the statement and its return to the State Tax Commissioner for the purpose of the valuation of its capital stock. That fact invited and resulted in considerable juggling of figures and tended to produce inequality in the administration of the law. Accordingly the present statute was passed, by which the first day of January of each calender year was fixed at the time as of which all such returns were to be made, and the valuation of the stock determined, and such legislation has been repeatedly sustained in this court. *Hopkins v. Van Wyck,* 80 Md. 15; *Skinner Dry Dock Co. v. Baltimore* 96 Md. 43. It must be regarded, therefore, as settled that in this State that for the purpose of the taxation of the capital stock of a corporation January first is to be taken as the date with regard to which all elements are to be reported, considered and established, conclusive alike upon the State and the corporation. The same rule has been upheld in this Court with regard to local taxation in the City of Baltimore, both in the *Skinner Dry Dock* case and in the case of *Hamburger v. Baltimore,* 106 Md. 479; *Union Trust Co. v. State,* 116 Md. 377.

Corporation Taxes—Payable to State Treasurer. By the provisions of the *Code, Art. 81, sec. 93,* taxes imposed

under the Act of 1868, Chap. 371, and the Act of 1870, Chap. 422, are payable to the State Treasurer and not to local collectors, and the State may enforce their payment by a writ of *mandamus*. *Emory v. State,* 41 Md. 54.

The Act of 1872, Chap. 419, repealing *Code, Art. 81, sec. 93,* and substituting another section therefor, did not relieve the officers of corporations from the payment of the taxes levied upon their capital stock directly to the State Treasurer, and the payment of such taxes may be enforced by a writ of *mandamus*. *Ibid.*

Corporation Taxes—When Due. Under the Act of 1890, Chap. 244, the taxes on shares of stock are due and payable on November 1. *State v. Safe Deposit and Trust Co.,* 86 Md. 581.

County Commissioners Have No Power to Assess Rolling Stock of Railway Companies. The County Commissioners of a county in which is situated the principal offices of a railway company, whose roads extend through other counties of the State, have no power to levy taxes on the rolling stock of the company, since the Act of 1896, Chaps. 120 and 140, provide a special mode for the assessment of the rolling stock of railway companies. *B. C. & A. Ry Co. v. Wicomico County,* 93 Md. 114.

County Commissioners' Power to Refund. *Code, Art. 25, sec. 9,* makes it the duty of the County Commis-

sioners, when satisfied that any error has arisen by assessing property not liable to be assessed, to refund to the proper person any money that may have been paid in consequence of such error. If the statute has created and imposed a clear, positive duty, as we think it has, such as would be required to support this application, to repay the taxes erroneously levied and received, that statute simply operates to change or modify the common law rule that taxes paid under a mistake of law cannot be recovered back. That being so, whether the taxes be paid under a mistake of fact or a mistake of law, would make no difference, for in either case the party receiving the taxes would be bound to refund them; and there would be an implied promise raised to pay the amount so received, and upon that implied promise an action for money had and received could be maintained. If the Commissioners should decline to repay, mandamus would lie after judgment. *George's Creek Co. v. Allegany Co.*, 59 Md. 261.

Where taxes were improperly paid to a county instead of to a city, if the city compels a second payment of the taxes, the taxpayer may recover from the county. *Frederick Co. v. Frederick*, 88 Md. 656.

See *Baltimore v. Hussey*, 67 Md. 112, where it was held that money voluntarily paid, with full knowledge of the facts, for taxes afterward held to be illegally assessed, could not be recovered back, although paid by plaintiff through a mistake as to her legal rights; also *Monticello Co. v. Baltimore*, 90 Md. 416, and *Baker v. Baker*, 94 Md. 627.

Inasmuch as there is a statute authorizing county commissioners to refund money erroneously paid as taxes, either by mistake of fact or of law, and that there is no such statute applicable to Baltimore City, the presumption is that it was purposely withheld from the city. *Baltimore v. Harvey,* 118 Md. 282.

"Debts" and "Taxes." The word "debts" imparts the money obligation of a person incurred in his private capacity. As defined by this Court in *Baltimore v. Greenmount Cemetery,* 7 Md. 517, the word "tax" means "a burden, charge or imposition put or set upon a person or property for public uses." And in *Cooley on Taxation,* 13, it is stated that "taxes are not debts in the ordinary sense of that term, and their collection depends on statutory enforcement." * * They are not contracts between party and party; they are positive acts of government to the making and enforcing of which the personal consent of the inhabitants is not required. *Bonaparte v. State,* 63 Md. 469.

Defective Notice to Delinquent Taxpayers Renders Void the Tax Sale. This is an action of ejectment brought by the appellant to recover certain leasehold property situated in Baltimore City, and now in the possession of the appellee. The defendants assert title under a deed of March 30, 1893, from City Collector Hopkins, of Baltimore, made in pursuance of a sale of the property for taxes, due and in arrear for the years 1889 and 1890. The deed and the tax sale proceedings are attacked by the appellant and the questions

here involved turn upon the deed and the sufficiency of this sale. There are two grounds of objection relied upon by the appellant to the validity of the deed, and the tax sale; *first,* because the Collector failed to give a legally sufficient notice of the sale, and *second,* because the description of the property given by the Collector in the advertisement of sale was defective, and was not according to the requirements of law, in that it failed to designate the property to be sold, with such certainty as identified it. If these objections are well taken they are fatal to the appellees' case, and it will not be necessary for us to consider the other questions raised by the record. It has been often decided by this Court that the validity of tax sales depends on a substantial compliance on the part of the Collector with all the essential requirements of the statute. The notice required by the statute is jurisdictional. *Baumgardner v. Fowler,* 82 Md. 631.

In the case before us, the report of the Collector states that, thirty days prior to proceeding, bills setting forth the amount of taxes due on the said property "and specifying the year or years for which such taxes were due, were delivered to Mary A. Myers at her residence, 1703 Lemon alley, in the City of Baltimore, the owner of such property." It appears from the record and is not controverted by the appellee, that Mrs. Mary A. Myers died in the year 1881, so that notice for taxes due for the year 1889 and 1890 could not have been delivered to her at her residence, in the manner stated in the Collector's report. No other notice is alleged to have been given. The statute prescribes the

several and the specific modes by which notice is to be given by the Collector of Taxes in Baltimore City, before he proceeds to collect the same by way of sale and execution. He is required to deliver a copy of each tax bill to the person by whom such taxes are to be paid or one of them, if more than one, or at his, her or their last known residence, or to his, her or their agent, or left upon the premises with a notice thereon, that unless the taxes so due are paid within thirty days thereafter, five per cent. of the gross amount thereof will be added to the bill, and at the expiration of thirty days, from the delivery of such bills, and notice, if the same be not paid, five per cent. of the gross amount shall be added to the bill as a penalty and collected in the same manner as the bill itself. (Act of 1890, Chap. 205.) It is quite clear that neither the requirements of the statute as prescribed by the *Code, Art. 81, sec. 49,* nor by the Act of 1890, Chap. 205, as to preliminary notice were complied with by the Collector. This being so it is fatal to the appellee's case. *Benzinger v. Gies,* 87 Md. 707.

Deposits in Savings Bank Invested in Ground Rents not Taxable. This suit is brought to recover the tax assessed by the Act of 1874, Chap. 483, sec. 85, which provides: "The president or other officer of any savings bank, institution or corporation, which shall receive deposits and allow interest thereon, shall furnish to the Comptroller on or before the first day of July of each year, the aggregate amount of deposits in such corporation; and shall pay to the Treasurer on or before the first of January succeeding, out of

the interest due to the depositors, the State tax on said deposits." The question is whether the deposits of the appellee invested in ground rents, reserved under the leases of 99 years renewable forever, on property, which, by the law of this State is assessed to, and the taxes thereon paid by, the leasehold owner, are within the operation of this Act. The contention is that the tax thereby imposed is in effect a tax on property held by the appellee in trust for its depositors, and to hold that the deposits invested in ground rents are liable to the payment of this tax, would be to subject the same property to double taxation, which is forbidden by the State Constitution. * * *

In view of the decision in *State v. Sterling,* 20 Md. 502, this contention is, we think, well founded. The precise question arose in that case upon the construction of the *Code, Art. 81, sec. 95,* which in terms is identical with the Act of 1874; and the Court being of opinion that the tax thereby asesssed, was a tax upon the property of the institution, decided: 1st, That the deposits invested in government securities, which by the Act of Congress, were exempt from State taxation, were not within the operation of the law; and 2d, That the deposits invested in shares of stock or other funds, upon which taxes were paid by the corporation, or other persons, were not subject to the payment of the tax imposed by the Act, because to hold otherwise would subject the same property to double or unequal taxation. This decision was made in 1867, and in passing the Act of 1874, identical in terms with the Act thus construed by the Court, we must presume the Legislature meant and understood it,

in the same sense in which the prior Act had been interpreted construing the Act of 1874. Then according to the intention of the Legislature, as thus ascertained, we must hold that the deposits of the appellee invested in ground rents, the taxes on which have been paid by the leasehold owner, are not within the operation of the Act of 1874. * * *

In so deciding, however, we are not to be understood as concurring with the Court in the construction placed upon the Act in *Sterling's Case*. The tax imposed by that Act on the deposits in savings banks, is not, in our opinion, a tax on the property held by such banks in trust for the deposits. It is not a tax on the property nor upon the investments held by the bank; nor is it a tax levied on each deposit at a certain rate in proportion to its amount, but it is assessed on the amount of all deposits in the bank ascertained and fixed by the average sums which it has had in its hands, during the six months preceding a specified day. It is nothing more or less than a tax on the bank itself, upon its franchise, and assessed in consideration of the privileges thus conferred by the State. * * *

Savings banks are not banks of discount, nor have they any capital stock. The interest, therefore, due the depositors is derived solely from the use or investments of deposits, and any tax imposed on such banks, must necessarily, to some extent, diminish the interest to be received by depositors and may be said therefore to be paid out of the interest due to them. So the tax imposed by the Act in *Sterling's Case*, and the tax imposed by the Act of 1874, are not in our

opinion taxes on the property of savings banks held by them in trust for depositors, but a tax on the franchises, which such institutions enjoy through the favor of the State. * * *

We should hold that the deposits of the appellee invested in ground rents are not exempt from the operation of the Act of 1874, but for the fact that the Act was passed after the decision in *Sterling's Case,* upon the construction of a prior Act identical in terms with the Act of 1874. If by the latter Act, the Legislature meant to tax the deposits, whether invested in non-taxable securities, or ground rents on which taxes were paid by the leasehold owner, this intention, in view of the decision in *Sterling's Case,* ought to have been expressed in clear and explicit terms. *State v. Central Savings Bank,* 67 Md. 290.

Distilled Spirits. There shall be levied upon all distilled spirits as personal property the same rate of taxation which is imposed by the laws of the State on other property for State and County purposes. *Code 1911, Art. 81, sec. 218.*

The tax upon distilled spirits is not on the property, but upon the owner. *Monticello Co. v. Baltimore,* 90 Md. 423.

As to the duty of distillers, custodians and owners of bonded warehouses to make storage reports to the State Tax Commission, and the duty of the Commission to report valuations to the Appeal Tax Court and County Commissioners, see *Code 1911, Art. 81, secs. 219, 220 and 222.*

Since the distiller is the agent of the State to collect such taxes, the Tax Collector is not authorized to enforce payment thereof by distraint upon the property of the distiller himself, but the remedy is by action at law against him upon his statutory obligation to pay the taxes. *Fowble v. Kemp,* 92 Md. 630.

Any warehouseman, agent or custodian paying the tax on distilled spirits shall have a lien upon the distilled spirits covered by such tax. *Code 1911, Art. 81, sec. 226.*

The requirement that the distiller shall pay the tax for the owner is not unlawful or unreasonable, the Legislature having the power to require him as custodian to pay the tax on the property in his possession, although owned by unknown persons holding warehouse receipts; he is made the agent of the State to collect the tax and receives a lien on the property to secure repayment. *Carstairs v. Cochran,* 95 Md. 488; *Monticello Co. v. Baltimore,* 90 Md. 419.

Domicile of Persons and Presence of Property in State the Test of Taxability. When a person is not domiciled within the State and property is not within its borders the State can afford no protection to either and can give no equivalent in return for taxes paid. Necessarily, all real estate in the State is taxable wherever the owner may be, but the law assumes that when a person leaves the State his personal property goes with him. By the universal law of all civilized nations property in action has its habitat at the domicile of the owner. *Appeal Tax Court v. Patterson,* 50 Md. 354.

It is the rule of law that the possession of personal property follows the owner to wherever he may be domiciled. *Latrobe v. Baltimore,* 19 Md. 13.

The mere intention of a person to change his residence will not exempt him from taxation, and, to make his intention effective, he must actually remove from the county or city before the annual levy is made. *Stoddert v. Ward,* 31 Md. 562.

Double Taxation. A double tax is not necessarily void. The Declaration of Rights requires equality in taxation, and in so far as a double tax destroys that equality, it is invalid, but not otherwise. *Cooley on Taxation,* 389. *U. S. Elec. Power & Light Co. v. State,* 79 Md. 71.

Easements Enjoyed by the Consolidated Gas Company in the Use of the Beds of Public Streets are Taxable—Distinction Between Franchise and Easement.. The Consolidated Gas Company, of Baltimore, appealed from a judgment of the City Court, in 1905, confirming an additional assessment by the Appeal Tax Court, of $6,000,000, which sum comprised valuations of real estate, "services" and gas mains, pipes and other construction located in, on, under and over the public highways of Baltimore City, including the value of the easement enjoyed by the Company in said highways. The contention of the appellant was that there was no existing enactment which authorized the Appeal Tax Court to tax the incorporeal right which the Com-

pany called a *franchise,* but which was claimed by the City to be an *easement.* * * *

A franchise does not involve an interest in land—it is not real estate, but a privilege which may be owned without the acquisition of real property at all. The *use* of a franchise *may* require the occupancy, or even the ownership, of land; but that circumstance does not make the franchise itself an interest *in* land. Because land *may* be required in putting a franchise into effective operation, it does not follow that the franchise *is* land, or an interest in land. But an easement is quite a different thing. It is essentially and inherently an interest in land. It is an estate—a dominant estate imposed upon a servient tenement. * * * * *

What then is the thing assessed and taxed in this case? Is it the mere right to occupy the streets below the surface with mains and pipes—which is the franchise—or is it the easement acquired, through the franchise, by the actual occupancy of the highways in that manner? * * *

Ostensibly it is the latter; and the right to include the value of that easement as an element in fixing an assessment on the tangible property employed in availing of that easement is no longer an open question in this State since the decision in *Appeal Tax Court v. Union R. R. Co.,* 50 Md. 274. In that case this Court held: "But few of the railroads of the country have anything more than a mere easement in the ways occupied by their roads, and we are not

aware that it has ever been held that, because the Company did not own the freehold estate in the bed of the road, nothing but the mere superstructure thereon could be assessed to the Company; the rule would seem to be clearly otherwise, and that an easement enjoyed in the bed of a public street may be taxed as real estate." We need not go beyond Maryland to find cases to support the proposition that the easement possessed by a corporation in a public thoroughfare may be taxed as real estate. See *Swan v. Kemp,* 97 Md. 692; *Dundalk &c. Ry. Co. v. Smith,* 97 Md. 181; *United Ry. Co. v. Baltimore,* 93 Md. 633; *State v. N. C. Ry. Co.,* 90 Md. 473; *Smith v. School Commissioners,* 81 Md. 516; *P. W. & B. R. R. Co. v. Appeal Tax Court,* 50 Md. 409.

It follows that the property or estate which the Gas Company has in the highways of Baltimore is an easement which may be properly assessed to the Company as real estate; there was no error committed by the City Court in respect to this question. *Consolidated Gas Co. v. Baltimore,* 101 Md. 545-550.

The Appeal Tax Court added together the dividend paying obligations and capital stock of the Company as representing the aggregate value of the corporation's property. The value of the Company's real and personal property was deducted from this total, the remainder being divided by two, leaving $6,000,000, and this sum was fixed as the valuation of the easement. Held by the Court that this method of assessment was unlawful and capricious. *Ibid.*

Corporate bonds, secured by mortgage on lands in this

State and owned by residents, are, under *Code, Art. 81, secs. 2, 92 and 210,* assessable to the owners, and there is no statute authorizing the taxation of the same bonds as being a part of the corporate assets. *Ibid.*

Though he may not be familiar with real estate values in Baltimore, a person who has been a student of taxation, and has made valuations of easements in other cities, and who has studied the extent, size and mileage of the Consolidated Gas Company mains, and is informed as to the earnings of the Company, is qualified to testify as an expert as to the value of such easement. *Consolidated Gas Co. v. Baltimore,* 105 Md. 56.

The value of an easement has no necessary relation to the value of the land in the neighborhood. *Ibid.*

It is competent for the Baltimore City Court to summon the Judges of the Appeal Tax Court to testify as to how valuations were made. *Ibid.*

Electric Lighting Company not a "Manufacturing Industry" Within the Meaning of the Statute. A bill in equity was filed by the appellant to enjoin the City of Frederick from collecting certain taxes alleged by them to be due. In 1891, the Mayor and Aldermen of Frederick City, under authority of an Act of the Legislature of 1882, passed an ordinance providing "that the machinery and manufacturing apparatus of all manufacturing industries established within the corporate limits of Frederick within two years next succeeding the date of the passage of this

ordinance and actually employed or used in the business of manufacturing in Frederick City" shall be exempt from taxation for five years. The bill alleges that the appellant located its manufacturing plant in Frederick City within the prescribed time and has since then been engaged in the manufacture of electricity. The appellees filed an answer in which they allege that the plant of the appellant is not included in the exemption, as it is not comprehended within the terms "manufacturing industries." The controversy therefore raised by the pleadings is whether an electric light company is a manufacturing industry within the meaning of that ordinance. * * * * *

The purpose of the law is declared by the ordinance to be "for the encouragement of the growth and development of manufactures and manufacturing industries in Frederick City." The exemption embraces "the machinery and manufacturing apparatus of all manufacturing industries" established in the city within two years. Now, would the term "manufacturing industries" strike the mind of the average man when used in the above connection as including an electric light plant? In advertising a city or town as a desirable place for manufactures, the fact that it was lighted with electricity might be mentioned, just as good roads or streets, pure water, healthy climate or other attractions might be, but if a list of its manufactures were to include the electric light plant amongst them, it would be looked upon as an effort to enlarge the number beyond what the fact justified. If a company proposed to manufacture armatures, lamps or other electrical appliances, one would think of it as a man-

ufacturing industry, but not so of an ordinary electric plant for furnishing electricity. * * * * *

An electric light plant does not require the employment of "much labor"—on the contrary, two or three men can probably run the "machinery and manufacturing apparatus" of a company that only runs at night and four or five could run them day and night, and it would hardly be contended that those terms would apply to and exempt the poles, wires, lamps, etc., of an electric light company. Nor is there likely to be any considerable increase in the employment of labor connected with it. A manufacturing establishment, such as we ordinarily think of in connection with that term, may have a very small beginning and develop into a large concern, and thereby benefit the community by the employment of labor and distribution of large sums of money, but it is not probable, if possible, that such results could ever follow from an electric light plant. We do not, therefore, think that an electric light company is within the object or contemplation of the ordinance before us, and it is not the kind of an enterprise meant by manufacturing industry, as therein used. *Electric Light Company v. Frederick City*, 84 Md. 599.

It would be an unwarranted construction of this ordinance to say that the Mayor and Aldermen of Frederick intended to include this company within what are ordinarily termed "manufacturing companies" when the statute authorizing the creation of such companies as the appellant excluded them from the class by placing them in another class. We

think it clear that an electric light company is not included within the terms "manufacturing industry" as used in this ordinance. *Ibid.*

Equity Jurisdiction in Tax Cases. Equity will not interfere by injunction to restrain the collection of a tax illegally assessed when the revenue statute provides an adequate remedy for the party aggrieved by such assessment. *Gittings v. Baltimore,* 95 Md. 419.

An equity court has jurisdiction to enjoin the Appeal Tax Court of Baltimore from classifying property in the Annex at the city rate when said property has not been so improved to bring it under the city rate. *Baltimore v. Gail,* 106 Md. 684.

The Appeal Tax Court of Baltimore City has the power to increase the assessment on land after a court of equity has passed a decree directing the sale of the land and appointing a trustee to make same. *Baltimore v. Gittings,* 113 Md. 119.

Has a court of equity jurisdiction to restrain the levy and collection of a tax attempted to be levied and collected illegally? To this interrogatory there can be but one answer and that must be in the affirmative. *Holland v. Baltimore,* 11 Md. 197; *Joesting v. Baltimore,* 97 Md. 594; also see *Baltimore City Charter, section 170.*

When land or other property is under the control of a court of equity, the ordinary statutory remedies for the

enforcement of taxes levied upon, or payable in respect of such property, are suspended, and payment must be received through the authority of the equity court. *Blakistone v. State,* 117 Md. 244.

When property is in an equity court and taxes are due thereon it is the duty of the Collector to apply to the Court to authorize their payment. *Prince George's Co. v. Clarke,* 36 Md. 219.

Taxes due on the property of an insolvent estate are payable out of a fund in the hands of the receivers. *Marine Bank v. Heller,* 94 Md. 213.

In *Joesting v. Baltimore,* 97 Md. 590, it was distinctly held that a court of equity has jurisdiction to restrain the levying of taxes which if levied would be unlawful. The objection in this case is against the validity of the assessment fixed in the Act itself, and a court of equity had full power to entertain it, under the averments of the bill filed in the case. *Leser v. Wagner,* 120 Md. 674.

While individuals cannot sue to restrain alleged public wrongs unless they have a special interest requiring protection, yet if the unauthorized act complained of would result in an increase of taxation, those upon whom this burden would fall constitute a special class with an interest distinct from that of the general public, and are entitled to seek relief by injunction. *Weller v. Mueller,* 120 Md. 638.

If the Act be invalid there can be no question as to the power and duty of a court of equity, at the suit of a taxpayer, to grant the relief prayed for in this bill because the acts therein complained of would be *ultra vires* and greatly injurious to the plaintiffs as taxpayers. The power of a court of equity, under such circumstances, to interfere at the suit of a taxpayer and arrest the unauthorized acts of a municipal corporation, has been settled in a long line of decisions of this Court. It was definitely settled in *Baltimore v. Gill,* 31 Md. 375, and the principles there announced have never been departed from in this State. *Painter v. Mattfeldt,* 119 Md. 471.

Error as to Name in Tax Assessment. When property owned by the Chesapeake Beach Ry. Co. is erroneously assessed to the Chesapeake Beach Improvement Co., the former Company, having knowledge of the assessment, is not entitled to apply for an injunction to restrain the collection of the tax on the property, but should apply to the proper authorities to correct the error. *Moffett v. Calvert County,* 97 Md. 266.

Errors of Tax Officials. In the execution of the revenue laws, the constitution and the acts of the Assembly have provided for the selection of certain public officers charged with the duty of assessing and collecting the public taxes; if any errors, omissions or irregularities occur in the discharge of their duties, such errors may be corrected by the means which the tax laws provide. *Stoddert v. Ward,* 31 Md. 563.

Escaped Property. The fact that property has escaped assessment, or been omitted from the assessment books when it was assessable under the law, being valued and placed in the books after the levy has been made, cannot affect the right of the State or municipality to collect the tax, nor will it release the owner. *Hopkins v. Van Wyck,* 80 Md. 7.

Evidence in Tax Appeals. When the question is as to the validity of the valuation of property for assessment and taxation, the assessor who made or recommended the assessment is entitled on direct examination to mention the sales, leases and mortgages of other similar property upon which he based his valuation, although he had been informed of such sales, etc., by other persons, having himself no personal knowledge of them, or from an inspection of the land records. *Baltimore v. Hurlock,* 113 Md. 674.

A plat made by the Appeal Tax Court showing the square or block of ground in which the property in question is located and the assessment of other lots of ground in that block, and also the data as to sales, leases and mortgages of property in the neighborhood, of which the assessors had been informed, is admissible in evidence. *Ibid.*

Exemptions From Taxation. For all property exempt from taxation in Maryland see *Code 1911, Art. 81, sec. 4;* also Act of 1914, Chap. 467, exempting $500 worth of household furniture and effects; also Act of 1914, Chap. 528, exempting from State taxes manufacturing plants that have

been exempted by local legislation in the counties and in Baltimore City.

Exemptions must be strictly construed. *Appeal Tax Court v. Gill,* 50 Md. 377. Exemptions from taxation are strictly construed and must be clearly made out. *Anne Arundel County v. Annapolis R. R. Co.,* 47 Md. 592.

The exemption of the lands and buildings of a cemetery company does not extend to a fund invested in stocks. *State v. Baltimore Cemetery Co.,* 52 Md. 639; *Appeal Tax Court v. St. Peter's Academy,* 50 Md. 345; *Appeal Tax Court v. Baltimore Cemetery Co.* 50 Md. 435.

Property of the United States is not subject to state taxation. *Van Brocklin v. Tennessee,* 117 U. S. 151.

Personal property of officers and agents of the Federal government residing within the limits of the Naval Academy grounds is exempt from taxation. *Chauvenet v. Anne Arundel County,* 3 Md. 259.

Only the building or parts thereof which are reasonably necessary for the corporate purposes of hospitals, charitable or benevolent institutions, etc., are exempt from taxation. Any portion of the building devoted to other purposes and rented out, and stocks and other investments are taxable. *Baltimore v. Grand Lodge,* 60 Md. 281; *Appeal Tax Court v. St. Peter's Academy,* 50 Md. 352; *United Railways Co. v. Baltimore,* 93 Md. 634.

The exemption from taxation granted by a company's charter has no application to a paving tax. *Baltimore v. Greenmount Cemetery Co.* 7 Md. 534.

Certain classes of property may be exempted from taxation within reasonable limits. There must, however, be no arbitrary discrimination between properties of the same kind. An exemption from taxation of a wharf owned by a religious corporation held invalid because it created an arbitrary discrimination and because it was in conflict with Art. 3, sec 33, of the State Constitution. *Baltimore v. Starr Church,* 106 Md. 281.

The fact that only a portion of a graveyard is occupied by graves does not limit the exemption to the portion so occupied. *Appeal Tax Court v. St. Peter's Academy,* 50 Md. 353.

The fact that the personal property of a domestic corporation whose stock is subject to taxation in Maryland is exempt under *Code, Art. 81, sec. 4,* does not effect the liability to taxation of the personal property of a foreign corporation whose stock is taxable here. *Wilkens Co. v. Baltimore,* 103 Md. 309.

Code, Art. 81, sec. 4, which exempts from taxation the personal property of corporations whose capital stock is taxed, precludes the taxation of the machinery of a manufacturing company as a part of its real estate. *Anne Arundel County v. Baltimore Sugar Co.,* 99 Md. 485. See *Code 1911, Art. 81, sec. 164.*

Where a railroad exempted from taxation absorbs another railroad not so exempted, the property of the latter is still liable to taxation. *B. C. & A. Ry. Co. v. Ocean City,* 89 Md. 98. A grant of exemption to a railroad company does not pass to the purchaser of the property of said company under foreclosure. *B. C. & A. Ry. Co. v. Wicomico County,* 103 Md. 277.

Foreign Corporations Subject to State Laws. Any corporation not chartered by the laws of this State which shall transact business therein shall be deemed to hold and exercise franchise within this State, and shall be liable to suit in any of the Courts of this State on any dealings or transactions therein. *Code 1911, Art. 23, sec. 409.*

The general rule is well settled that foreign corporations which are permitted to come into a state for the prosecution of their business must be held to have accepted the restrictions and duties imposed upon them by the laws of the State they enter, and they can claim no other or greater rights or privileges than these accorded the domestic corporations. *Central Ga. R. R. Co. v. Eichberg,* 107 Md. 372; *Boggs v. Inter-American, Etc. Co.,* 105 Md. 371; *Harding v. American Glucose Co.,* 182 Ills. 551; *Horn Silver Mining Co. v. State of New York,* 143 U. S. 315. In the last case cited the Supreme Court observed: "It does not lie in any foreign corporation to complain that it is subjected to the same law with the domestic corporation." *Hannis Distilling Co. v. Baltimore,* 114 Md. 684.

Foreign Owned Securities. *Code, Art. 81, secs. 141, et. seq.,* provides for the taxation of shares in corporations created by this State and directs that when such shares are owned by non-residents they shall be valued to the owners in the county or city in which the principal office of the corporation is situated. The corporation is required to pay the tax for the shareholders and is authorized to charge them with the amount thereof. Plaintiff, non-resident, filed bill to restrain collection. Held that such shares of stock are properly situated in this State and are liable to taxation here although owned by a non-resident, the situs of the stock for taxation being fixed by statute at the principal office of the corporation. *Corry v. Baltimore,* 96 Md. 310-322.

Notice of the assessment given to the corporation itself is sufficient and a notice to each non-resident shareholder is unnecessary, because in the taxation of its shares the corporation is treated by the statute as representing the shareholders. *Ibid.*

We hold, therefore, that the shares of stock held and owned by the appellant, a non-resident of the State, in a Maryland corporation, are liable to taxation, under the statutes of this State, and that the tax is not in violation of either the State or Federal Constituion. *Ibid.*

No stocks, bonds, mortgages, certificates or other evidences of indebtedness of any company or corporation situate within the limits of the City of Baltimore, which are owned or held by persons residing without said limits, shall

be subject to taxation. *Baltimore City Charter,* p. 23. Held in *Corry v. Baltimore,* 96 Md. 310-322, that this does not apply to non-residents of the State.

Money and credits belonging to a non-resident could be permanently located within a state for purposes of taxation when the same are invested and controlled by a resident agent who has power to reinvest, or at his discretion, change the form of the investment. *Walker v. Jack,* 88 Fed. Rep. 576.

Foreign Securities. This State has the power to tax the bonds and certificates of debt of other states and of corporations created by them when held by residents of Maryland, although such bonds and certificates are exempted from taxation by the state issuing them or creating the corporation. *Appeal Tax Court v. Gill,* 50 Md. 396; *Appeal Tax Court v. Patterson,* 50 Md. 354.

Franchise—Definition of. A franchise is a special privilege conferred by the State on certain persons and which does not belong to them of common right, and although the franchise of a company may be considered in one sense property, and valuable property, yet it is not property in the meaning of that term as used in the Bill of Rights. *State v. P. W. & B. R. R. Co.,* 45 Md. 379.

Franchise Tax on Gross Receipts of a Guaranty Company not Payable on Receipts from Business Outside of the State. This is a suit by the State against the United

States Fidelity and Guaranty Company, a Maryland corporation, to recover a State franchise tax of two per cent. of its gross receipts claimed to be due by the appellee to the appellant for the year 1898. The only question presented in this case is whether the franchise tax of two per cent. is to be levied under the statute upon the total gross receipts or earnings of the defendant company, from its entire business or whether the tax is to be limited and imposed only against the gross receipts or earnings of the business done by the company within the State of Maryland and not outside of the limits of the State. * * *

It is well settled that in the construction of a statute the intention of the Legislature is to prevail and when ascertained it should be followed, although such a construction might seem to be contrary to the letter of the statute. It is obvious we think that a proper construction of the statute in this case limits the franchise tax to the business done by the defendant company within this State, and it was not the legislative intent that it should have an extra territorial effect. This construction of the statute is approved by a number of cases construing similar Acts limiting the tax upon the gross receipts or earnings of similar companies. In the case of *Pacific Express Co. v. Seibert,* 142 U. S. 339, Mr. Justice Lamar, in construing an Act of the Legislature of Missouri imposing a tax upon the gross receipts of express companies doing business in that State, said, that the statute confines the tax which it creates to the *intra-state* business and in no way relates to the interstate business of the company. *State v. U. S. Fidelity Co.* 93 Md. 315.

The Legislature could not have intended by the Act now before us to lay a tax upon the business of the company done by it without the State, but its object and purpose was to confine and limit the tax of its business done within the State. *Ibid.*

Franchises and Easements. The rights of a gas company to occupy with its mains and pipes the streets and alleys of a city is a franchise, but the actual occupation of the streets in pursuance of the franchise is an easement in land, and such easement may be assessed for taxation as real estate owned by the company. *Baltimore v. Consolidated Gas Company,* 101 Md. 541.

"Goods and Chattels Permanently Located"—The Meaning Thereof. The firm of Baker Bros. & Co. was taxed for 1892 in the sum of $80,000 on a stock of goods in their store in Baltimore City, and horses to the value of $750. The firm appealed to the City Court: (1) on the ground that two of the partners lived in Baltimore County, and the third party who lived in Baltimore had only a three-tenths interest in the business, and that the firm could be held liable for taxes only on that interest and (2) because the goods were not "permanently located" in Baltimore. The City Court decided that the City was entitled to recover only the amount of taxes due for the horses and for the three-tenths interest of Charles E. Baker, the partner who lived in Baltimore. The appellees relied upon the Constitution of Maryland, Art. 3, sec. 51, which provides

as follows: "The personal property of residents of this State shall be subject to taxation in the county, or city, where the resident bona fide resides for the greater part of the year for which the tax may or shall be levied, and not elsewhere, except chattels and goods permanently located, which shall be taxed in the city or county where they are so located." The appellees contended that the goods were not "permanently located" in Baltimore, and that was the principal question to be determined. * * * Such goods and chattels as compose the stock in trade of the appellees are not carried backward and forward between Baltimore County and the City of Baltimore. As long as they are the property of the appellees they are located in Baltimore City, and they are as "permanently located" there as such goods and chattels can be anywhere. They are not manufactured or purchased to be kept as long as they remain in existence. Until they are sold they remain "permanently" in Baltimore. The judgment below must be reversed. *Hopkins v. Baker,* 78 Md. 363.

If the position of the appellees is correct, it is possible to have hundreds of thousands of dollars, probably millions, of tangible personal property, goods and chattels, within the City of Baltimore, having the benefit of its police and fire protection from year to year, and yet not contribute one cent to the police or fire departments. Merchants transacting business in Cumberland, Hagerstown, Frederick, Annapolis and other cities and towns could escape all municipal taxes on their stock in trade by living beyond the

corporate limits, while those living within such limits must pay the municipal as well as state and county taxes on their stock in trade. *Ibid.*

It is proper to assess the property of a firm to the firm instead of the individual partners thereof according to their respective interests. As partnership assets are liable for partnership debts, before they are for the debts of the individual members of the firm, it would be proper to levy the taxes against the firm. *Ibid.*

Gross Receipts Tax on Corporations not a Double Tax. The appellant is a company incorporated under the laws of Maryland. It has a capital stock divided into shares and owns real and personal property. This real property has been duly assessed, and the valuation has been deducted from the assessed value of the capital stock as required by the *Code, Art. 81, sec. 141.* The State taxes upon the company's real estate has been paid, and so also have the State taxes on its shares of stock. In addition to these taxes the State levied, under the Act of 1890, Chap. 559, a further tax of one-half of one per cent. on the gross receipts of this and other like companies, and for a failure to pay this latter tax the pending suit was instituted. The defense relied on is that the gross receipts tax is a double tax upon the same property, and therefore unauthorized and illegal. It is claimed to be a double tax because it is insisted that the value which the capital stock possesses after the assessed value of the real estate has been deducted, is

such only as arises out of the ownership and operation of the franchises of the company, and as a tax on the gross receipts is a tax on the franchise, a tax on the capital stock, whose value is the ownership and use of the company's franchises is an additional tax on the same thing. * * *

But this argument is obviously fallacious. The Tax Commissioner is required by the statutes to deduct from the aggregate value of all the shares of the capital stock of banks and other corporations the assessed value of the real estate owned by the company, and to divide the residuum by the number of the shares of stock, and the quotient is declared to be the taxable value of each share for state purposes of taxation. Upon the valuation thus ascertained the state tax is levied. But the tax is not a tax upon the stock or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the State for the collection of the State tax. When the corporation pays the tax upon these shares it pays not upon its own property, nor for the company, but upon the property of each stockholder, by whom the company is entitled to be reimbursed. The tax is not levied upon the corporation at all, but on the owner of the shares. *United States Electric Light and Power Co. v. State*, 79 Md. 70. See also *State v. R. R. Co.* 40 Md. 51.

This tax and the gross receipts tax are not upon the same individual, natural or artificial, in consequence of his or its ownership of the same property, notwithstanding the

franchises of the corporation in some measure give value to the shares of stock. *Ibid.*

The state tax on gross receipts of railroad companies partly within this State is a franchise tax measured in amount by the extent of the business of the companies, and is not a tax on the goods transported or the tolls derived therefrom. Such a tax is valid, and is not an interference with or a regulation of interstate commerce, so as to conflict with the exclusive right of Congress to regulate commerce among the several states. *Cumberland & Penna. R. R. Co. v. State,* 92 Md. 668.

The gross receipts tax is a tax upon the franchise of railroad companies, measured by the extent of their business, and not a tax upon property. *State v. P. W. & B. R. R. Co.,* 45 Md. 379.

Ground Rent Investments by Savings Banks not Taxable. The question is whether the deposits of the appellee invested in ground rents, reserved under leases of 99 years renewable forever, on property which by the law of this State is assessed to, and the taxes thereon paid by the leasehold owner, are taxable under the Act of 1874, Chap. 483, sec. 85. The contention is that the tax thereby imposed is in effect a tax on property held by the appellee in trust for its depositors, and to hold that the deposits invested in ground rents are liable to the payment of this tax, would be to subject the same property to double taxation which is forbidden by the State Constitution. And in view of the

decision in *State v Sterling,* 20 Md. 502, this contention is, we think, well founded. *State v. Central Savings Bank,* 67 Md. 292.

Guardians Responsible for Taxes. There would seem to no room for doubt that the bond of a guardian is liable for taxes levied on property in his hands, while he continues to be such guardian. * * If it were not so, any guardian, resident or non-resident, who is not financially responsible, who held property that could not be reached by a tax collector, could collude with his ward and thus let the property escape taxation indefinitely. *Baldwin v. State,* 89 Md. 587. See *Code 1911, Art. 81, sec. 70.*

Though the guardian has settled his final account and delivered the property to his ward after the taxes were levied that fact will not relieve his sureties from liability therefor. *Ibid.*

Hearsay Evidence in Arriving at Valuations. Alfred D. Bernard, one of the special assessors to the Appeal Tax Court, testified that he passed, in the performance of his duties as such assessor, upon the assessment from which this appeal was taken. He testified upon his direct examination that the assessors personally examined the property, and "were guided by their personal knowledge of sales and rentals in the neighborhood; also by sales and rentals of which they had information from owners and tenants; also by sales recorded in the special assessors' 'card index,' and from auctioneers." Being asked to give the data relied on

by him, of which he was informed by others, an objection to the question was sustained by the lower Court and exception taken. The ground of the appellee's objection to the evidence sought to be introduced was that it was all hearsay and therefore inadmissible in direct examination though permissible upon cross-examination. There appears to be considerable diversity in the cases upon this question, and respectable decisions are to be found both ways, but we think upon principle the testimony thus excluded should have been admitted and this view is sustained by the weight of authority. *Baltimore v. Hurlock,* 113 Md. 681. See *Consolidated Gas Co. v. Baltimore,* 105 Md. 43; *Tidewater Canal Co. v. Archer,* 9 G & J. 317.

A skilful witness testifying as an expert may give the reasons for his judgment. The basis may include the result of inquiries made of others, or the fact of relevant sales known to the witness. 17 *Cyc.* 109. Why should not the witness be allowed to give its value, though he said his knowledge was derived upon hearsay and was not practical knowledge? The knowledge that the best expert possesses upon this subject is derived from hearsay. *Hanover Water Co. v. Ashland Iron Co.,* 84 Pa. St. 279. The facts upon which opinions of expert witnesses as to the value of property proposed to be taken in condemnation proceedings, may be stated by them either in chief or upon cross-examination. *Chicago & N. W. R. R. v. Chicago,* 154 Ill. 657. (Quoted, with approval, by the Court in *Baltimore v. Hurlock,* 113 Md. 683.)

Hospitals Under State Management not Assessable for Expense of Opening Contiguous Public Road. By the Act of 1876, Chap. 101, providing for the completion of Wilkens avenue, a board of assessors was appointed to levy assessments upon the owners of lands lying on or near Wilkens avenue for the construction and completion thereof as in their judgment may be benefited by the construction and completion of the same. The sum of $1,550 was assessed against the Maryland Hospital for the Insane on land owned by the hospital which was contiguous to Wilkens avenue. The assessment being ratified by the Circuit Court for Baltimore County an appeal was taken to this Court. * * * * *

If the land to be affected by the assessment is the property of the State used in carrying out one of the objects or functions of the State Government, we do not think it liable to the assessment; unless the power so to subject it has been clearly conferred in the said Act of 1876, Chap. 101, or it has been made so liable from the rights and powers conferred on the defendant, or the nature of its control over the property, under the Acts of 1876, Chap. 351, and 1878, Chap. 341. The declarations contained in the Acts of 1878 seem to clearly imply the proprietorship of the State in the hospital property; of the hospital being an established institution for carrying on one of the most needed charities of the State; and that the said board of managers is but a public agency of the State, for the administration of this particular charity, leave no room to doubt what is the legislative understanding of the State's relation to the property, and to the means employed to accomplish its purpose. * * * * *

It seems manifest that the "managers" are what the term imports—managers simply of the property, with no power to pledge, alienate or encumber it; charged with the duty of its protection and faithful operation for and on behalf of the State, but invested with no absolute ownership of the property. It was not the purpose of the Act of 1876 to levy an assessment against the property of the State and as the Maryland Hospital for the Insane is palpably the property of the State, the assessment in this case is unauthorized and void. *Baltimore County v. Maryland Hospital for the Insane,* 62 Md. 133.

Increase of Assessment of Land Decreed to be Sold in Equity. Plaintiff owned for his natural life a tract of land known as "Ashburton," a farm in Baltimore County that had become a part of the Annex. Under a decree of a court of equity he was appointed trustee to dispose of the farm. A notice was served on him personally, not as trustee, that it was the purpose of the Appeal Tax Court to revise the assessment, whereupon he applied for an injunction against the Appeal Tax Court. By the Act of 1908, Chap. 167, it is provided that any person aggrieved because of an assessment or classification made by the Appeal Tax Court may within thirty days appeal to the Baltimore City Court to review such assessment or classification, and that the proceedings of the Appeal Tax Court shall not be declared void unless there was an absence of due notice. Although the notice in this case was addressed individually to the appellee, and not as trustee, nevertheless by it he was

informed of the contemplated increased assessment, and in our opinion he was the proper person to whom the notice should have been addressed, nor was the permission of the equity court needed by the Appeal Tax Court to authorize the increase of assessment. Appellee was not entitled to apply to a court of equity, his remedy being by the City Court. *Baltimore v. Gittings,* 113 Md. 119. See also *Owners' Realty Co. v. Baltimore,* 112 Md. 477.

Injunctions Against Illegal Assessments not Allowed When There is Another Remedy. Section 170 of the Baltimore City Charter, embraces *illegal* assessments as a cause of appeal to the City Court. "A pretended assessment," such as the bill in this case charges, is an illegal assessment, and the City Court has the same power under this section to strike down a pretended or illegal assessment and to restore the actual or true assessment that it has to reduce or abate an erroneous or inequal assessment. The plain object of this section of the charter was to provide a prompt remedy for the correction of all errors in the assessment of taxes in the City of Baltimore, and in construing a similar position in *County Commrs. of Allegany Co. v. Union Mining Co.,* 61 Md. 545, this Court said that even where the tax itself is illegal, or the tribunal composing it has exceeded its powers the remedy by injunction cannot even then be invoked if an appellate tribunal has been created with power to remedy the wrong. * * Where an appeal is given to the parties to be affected by the proceedings, any irregularities therein are open upon appeal, and the appellate tribunal is

the proper one to review and correct them. *Gittings v. Baltimore,* 95 Md. 425.

Section 164A, of the Baltimore City Charter, gives the Appeal Tax Court power at any time to revise all valuations and provides a prescribed notice to all property owners whose assessments are to be increased. If, therefore, the prescribed notice of such purpose was not in fact given, such alteration and increase was illegal, and if the failure to give such notice had been alleged in the bill of complaint it cannot be questioned that the injunction should have been granted. * * The failure to give the prescribed notice is the only fact that would have given jurisdiction to the Circuit Court. *Ibid.*

Insolvent Corporations—Taxes Due a Lien on Assets. Assets of an insolvent corporation in the hands of a receiver are liable for taxes due. The taxes are to be paid regardless of the fact as to whether or not any dividends are payable to the owners of the shares. The taxes so due are a prior lien on the assets of the corporation. *American Casualty Insurance Co.'s Case,* 82 Md. 535.

Interest Bearing Deposits Taxable. Deposits in commercial banks, trust companies and other financial institutions (not savings banks) are assessed at the thirty-cent rate by the County Commissioners of Maryland and the Appeal Tax Court of Baltimore City, the bank books of the depositors being regarded as "evidences of debt," as provided in the *Code 1911, Art. 81, sec. 214.* (Note.—In October,

1911, Judge Brashears, Associate Judge of the Circuit Court for Carroll County, held that interest bearing deposits in banks cannot be legally taxed in Maryland, but the case was not taken to the Court of Appeals.)

Interest on Tax Bills. Taxes on both real and personal property "after they become in arrears shall bear interest at the rate of 6 per centum per annum." *Baltimore City Charter, sec.* 40; *Skinner Dry Dock Co. v. Baltimore;* 96 Md. 37.

We think no interest should be allowed on the claims for taxes in this case. While not precisely analogous, the case of *Hutchinson v. Liverpool & Lond. & Gl. Ins. Co.,* 153 Mass. 143, supports this conclusion. It is not easy, if indeed it be possible, to place upon a consistent basis many of the decisions in which interest has been allowed or disallowed. The failure to pay, as far as we can see, has been the result of the company's insolvency, and no penalty or damages in the way of interest ought to be added to the sums actually due. *American Casualty Company's Case,* 82 Md. 555.

By the Act of 1890, the taxes are due and payable on July 1st in each year, and it is provided that if not paid within thirty days thereafter the companies shall pay the additional sum of five per cent. as a penalty. The Legislature had the right to impose the penalty, and in a suit to recover such taxes, interest is chargeable on the amount of the tax from August 1st in each year, but no interest is chargeable

on the five per cent. penalty. *Cumberland & Penna R. R. Co. v. State,* 92 Md. 669.

Invalidity of Statute Exempting From Taxation a Wharf Owned by a Church. The Starr Methodist Church is the owner of a wharf devised to it by Wesley Starr. The church paid taxes on the wharf until 1904, when the Legislature passed an Act exempting the wharf from taxation. Notwithstanding this Act the Appeal Tax Court retained the property in its assessment books, and the City Collector advertised it for sale for non-payment of taxes. The Circuit Court granted a permanent injunction against the collection of the tax and the Appeal Tax Court appealed to this Court. * * *

It is apparent that the constitutionality *vel non* of the Act of 1904 lies at the root of this contention. In support of the appellant's position reference is made to the Declaration of Rights, Art. 15, which provides that "every person in the State, or person holding property therein, ought to contribute his proportion of public taxes, according to his actual worth in real and personal property." * * The exemption in this case does not apply to a *species* or class of property but to one piece of property only, leaving all other property of the same class or species subject to taxation; and for no other reason except the purely arbitrary one of a benefit or personal favor to the appellee and no one else. * * *

It is simply an *arbitrary* selection of the property of the appellee, and the conferring of a favor upon it, which is

denied all other owners of similar property. If this can be done in one case it can be done in another, and it would then be in the power of the Legislature to wilfully discriminate between its citizens, taxing some on account of their property, and at the same time exempting others similarly situated, and all the while acting under no reasonable, just or proper rule whatever, but solely at the dictation of its own caprice. Even an unreasonable *classification* is prohibited by the Fourteenth Amendment. * * We think (furthermore) that the Act exempting this property is void because it contravenes Art. 3, sec. 33, of the State Constitution in that it relates to the exemption from taxation of the property of a religious body, and this is a subject for which provision has already been made by an existing general law, namely, Code, Art. 81, sec. 4. *Baltimore v. Starr Church,* 106 Md. 281.

Invalidity of Statute Giving to County Where Corporation was Created the Tax on Shares Owned by Non-Residents. The Act of 1900, Chap. 579, provided that the incorporated companies of Allegany County, whether dividend paying or not, shall pay the State and County taxes levied upon the assessed value of their capital stock, held by stockholders, resident or non-resident of Allegany County, but the holders of said stock shall not be liable upon the stocks held by them. * * This Act, though professing to be a local law for Allegany County, is not confined in its operations to the limits of that county. It operates in every county in the State in which there is resident any stock-

holder of an Allegany County corporation, and withdraws from every such county the tax upon the shares of stock held by residents of such county, which under the existing general provision would go into the treasury of every such county. Held to be invalid because it is in violation of the Constitution, Art. 3, sec. 51, which provides that personal property of residents shall be taxable in the counties in which they reside; also that it violates sec. 33 of said Article which provides that no special law shall be passed by the General Assembly for any case which is covered by a general law. *Baltimore v. Allegany County,* 99 Md. 1.

The policy as to personal property of residents of the State is fixed by Art. 3 of the Constitution. It is founded on Art. 15 of the Declaration of Rights which requires every person in the State to contribute his proportion of public taxes for the support of the government according to his actual worth in real and personal property. *Ibid.*

No Maryland case has been cited, and we know of none, either deciding or intimating that shares of stock held by a resident of the State can be taxed elsewhere than at the *bona fide* residence of the owner. *Ibid.*

Itemizing Stocks of Goods not Necessary. It is not necessary to itemize the stock in trade when it is assessed. The assessors examine the stock, the goods and chattels, and fix their value for taxation just as they do the furniture or other tangible property at the respective residences of the appellees. *Hopkins v. Baker,* 78 Md. 375.

Jurisdiction of Circuit Courts—No Power to Enjoin State Officials Beyond Their Circuits. By Sec. 178, Chap. 120, and by Sec. 199, Chap. 140, of the Acts of Assembly of 1896, provision is made for the valuation and assessment of the rolling stock of railway companies for purposes of county and municipal taxation. In substance these sections enact that the *situs* of such rolling stock shall be taken and considered to be in the assessment district in which the company's principal place of business is located. that the total valuation shall be made there and that for the purposes of county and municipal taxation this total valuation shall be divided amongst the counties and the City of Baltimore in proportion to the mileage of road-bed located in the counties and in the city respectively. Under the provisions of these Acts the rolling stock owned by the Philadelphia, Wilmington & Baltimore Railroad Company was valued and assesssed in Baltimore City; the total valuation thereof was returned by the Board of Control and Review to the State Tax Commissioner, who at once made an apportionment and division of the whole between the city and the several counties of this State through which the railroad is located, and ascertained upon the mileage basis, that the amount chargeable to the company for county taxation in Harford County was $550,202.81, which amount he forthwith certified to the County Commissioners of that county. From this apportionment the railroad company took an appeal to the State Board. Pending that appeal the County Commissioners of Harford County filed in the Circuit Court the bill of complaint to be found in the record now before us.

This bill alleges that the Comptroller and Treasurer is about to interfere with said apportionment and to largely reduce the amount thereof under pretence of reviewing the same as a board of appeal, which action, it is charged, is without any legal authority or warrant of law. Upon this bill an *ex parte* order was passed, directing the injunction to issue as prayed. The defendants demurred to the jurisdiction of the Court, and appealed to this Court from the order granting the injunction. * * *

It is nowhere averred in the bill that either of the defendants is a resident of Harford County, and apart from all other questions in the case, it is insisted that, in the absence of any appropriate allegation showing that the defendants were, or that one of them was, within the Court's jurisdiction or what the subject-matter of the proceeding was, the Court below possessed no power to order the injunction to be issued. Not only does the bill fail to aver that the defendants were within the limits of the Court's jurisdiction, but docket entries affirmatively show that they were not, for no writ was directed to them in Harford County, but three were sent to other circuits in the State. It cannot be contended that the Circuit Court for Harford County has authority to restrain by injunction the fiscal officers of the State who do not reside or are not found within that county, from doing some act, beyond the limits of the county, respecting property not actually situated in the county; without conceding to every other Circuit Court in the State a like and equal power. And if each Circuit Court possess, under these conditions, the power to issue an injunction to

operate beyond the territory over which its jurisdiction extends and against persons not amenable to its ordinary process and to inhibit the doing of an act not attempted or intended to be done within the county over which the Court's jurisdiction does reach, then that power is not to be found either in the constitution or the statutes of the State. In the very nature of things no such jurisdiction can be maintained. To uphold it in this instance would be to admit its existence in any other court of equity in Maryland, and results certainly might be, that the State's officers would be proceeded against, not where they reside or even where they transact the public business, but wherever a plaintiff who sought to subject their official functions to a court of equity, might happen to live. This would lead to endless confusion, if it would not practically cripple the efficiency of the officers themselves; and, besides, it would materially amplify the authority conferred by statutes upon the courts. The State Treasurer and the State Comptroller were directly authorized by legislative enactment to examine into the apportionment made by the State Tax Commissioner and to readjust the same, and it follows that the Circuit Court of Harford County had no power to grant the injunction. *Graham v. Harford County,* 87 Md. 323.

Land Under Water. The title to land under the water is in the State, and hence is not subject to taxation. *Western Md. R. R. Co. v. Baltimore,* 106 Md. 567.

Although the riparian owner has the right to reclaim the land to make improvements into the water in front of his

original land, yet until he does so the title to the land under the water is in the State. *Ibid.*

Landed Property. The term "landed property" as used in the annexation Act of 1888, sec. 19, shall be construed to mean real estate, whether in fee simple or leasehold, and whether improved or unimproved. *Code 1911, Art. 4, sec. 4.*

"Levy"—Meaning of. The word "levy" has different meanings according to the object to which it is applied. As applied to taxes it sometimes means to raise and exact by authority of government or to determine by vote the amount of tax to be raised. It is in this sense that towns and cities levy taxes; in other cases it is used with reference to the mere ministerial or executive act of entering them on the tax books and collecting them. 5 *Words and Phrases,* p. 4101 (quoted in *Union Trust Co. v. State,* 116 Md. 373.)

The act of the Assembly fixing the amount to be imposed per hundred dollars is a legislative levy of the tax, but that levy is only completed when it is entered on the books of the State Comptroller. *Union Trust Co. v. State,* 116 Md. 373.

Levy of Taxes by De Facto Officers of a Town, Though not Sworn in, Valid and Binding. This is a bill to restrain the appellee from enforcing the payment of taxes levied by them on the property of the appellant. It is admitted, that the appellees were duly elected "the Burgess and Commissioners of Hancock,"—that they qualified as such by taking the oath of office prescribed by the charter, and entered upon

the discharge of the duties of their office. But it is argued that the assessment of taxes made by them is invalid, because they have not taken the oath of allegiance required by the Constitution of the State, Art. 1, sec. 6. * * *

Admitting for the purposes of this case, that it was necessary for them to take the oath prescribed by the Constitution, to constitute them officers *de jure,* it is conceded they entered upon and have continued to discharge the duties of their office; and no principle is better settled than that the acts of officers *de facto* in regard to public matters affecting the public interests, are to be regarded as valid and binding; as much so as if the same acts had been performed in the same manner, by an officer *de jure. State v. Carroll,* 38 Conn. 449; *Cooley on Taxation,* 189. * * *

It has been questioned whether this principle applies to the acts of officers entrusted with the assessment and levy of taxes, but as taxes are levied for the support of the government, the reasons of public policy on which the principle is founded, apply with even greater force in regard to the acts of officers whose duty it is to levy and collect such taxes. And such is the general current of decisions in this country. *1 Dillon on Mun. Corp., 276; Blackwell on Tax Titles, sec. 98,* and cases cited. Being officers *de facto,* the public and official acts of the appellees as Burgess and Commissioners of Hancock are valid and binding. * * *

It is argued that no assessment was in fact made by the appellees. In authorizing the town authorities to assess and levy taxes, the charter is silent as to the mode and manner

in which the assessment is to be made. Instead of appointing persons to assess the property of persons subject to taxation, the appellees adopted the assessment made for State and county purposes, making such changes as might be necessary arising from change of ownership, etc. It is not suggested that this assessment is unfair, unequal, or in any manner oppressive. Notice was given by the appellees of the assessment thus made and adopted by them, and an opportunity afforded to have the same corrected and readjusted should such be necessary. There is nothing in the charter under which the appellees were elected, nor is there any general principle of law which forbids them from adopting the assessment made for State and county purposes, as the basis of the levy to be made by them, *Koontz v. Hancock,* 64 Md. 134.

License Taxes. The right to impose a license fee for conducting a particular business is vested in the Legislature by the Constitution. The license fee is a tax on a business, not on property. *State v. Applegarth,* 81 Md. 293.

Liens For Taxes. All State and county or municipal taxes shall be liens on the real estate of the party indebted from the time the same are levied. *Code 1911, Art. 81, sec. 49.*

Taxes are not a lien *per se;* hence they are not a lien on personal property. *Parlett v. Dugan,* 85 Md. 409; *Degner v. Baltimore,* 74 Md. 146.

Limitations Against Taxes Must be Pleaded. Though it is provided in the *Code, Art. 81, sec. 83,* that taxes must be collected within four years from the time they are levied, the Statute of Limitation will not avail unless it is plead by the person from whom the taxes are demanded. Unless plead, the lien on the property still exists, and the collector may proceed to sell it. *Baden v. Perkins,* 77 Md. 465.

List of Stockholders Must be Furnished by Corporations to County and City Authorities. The Fireman's Insurance Company of Baltimore refused to furnish to the Appeal Tax Court of Baltimore its list of stockholders as required by the express terms of the Code. The company contended that its stock ought to be assessed at its par value, as fixed by its charter, and that the tax, since the Act of 1861-1862, Chap. 251, was payable to the city on the entire capital and was properly payable by the company and not by the respective shareholders. Upon application of the Appeal Tax Court the Superior Court of Baltimore City issued a writ of mandamus ordering the company to furnish a list of its stockholders. * * * *

We concur in the opinion of the Superior Court in this case, and think the mandamus was properly ordered. The appellant is a joint stock corporation in the City of Baltimore, subject to the provisions of the 97th Section, 81st Article, of the Code; and was bound, by the express terms of that section to furnish to the Appeal Tax Court the list of stockholders with their places of residence, and the

amount of stock held by each, and having failed or refused to do so, the appropriate remedy to enforce a compliance with the obligation so imposed, was by the writ of mandamus. The position of the appellant that the corporation, as an entity, and not the shareholders, is the owner of its capital stock is more ingenious than sound. The purpose of the law is that every owner of property, whether it be shares of stock or other property, shall pay taxes thereon at its actual cash value. The whole Court agree in the opinion that the shares of stock are liable to be assessed at their cash value at the time of the assessment. *Fireman's Insurance Co. v. Baltimore,* 23 Md. 309.

The necessity of furnishing a list might be obviated by the corporation agreeing with the Appeal Tax Court to pay an ascertained amount of money as a tax upon the stock liable to city taxation, in lieu of an assessment upon the individual shares, thus saving the city the necessity of resorting to the individual stockholders. The Act of 1864, Chap. 391, in express words, authorizes such agreements to be made by joint stock corporations. *Ibid.*

Local Assessment of Corporate Stocks and Bonds. The stock of the American Coal Company, with its principal office in Allegany County, is divided into 58,800 shares, one hundred of which is owned in Allegany County and the remainder by persons in other states. The Company owned valuable real estate in Allegany County and in New Jersey, and the State Tax Commissioner, as required by law, de-

ducted the value of this real estate from the total value of the whole number of shares of capital stock, thus determining the value of each share of stock and of the whole number of shares. The real estate owned in New Jersey contributed very largely to the value of the stock as ascertained by the State Tax Commissioner. The Company paid the taxes for 1880 on its real estate owned in Allegany County, but refused to pay the tax bill for the whole number of shares as levied by the County Commissioners, and suit was brought for recovery of these taxes. The appellants contended that the Company should not have been charged with the whole number of shares, and particularly that the State Tax Commissioner had no authority to include the New Jersey real estate in his valuation. * * * *

It was clearly the purpose of the *Code, Art. 81, sec. 151,* to give to the counties and to Baltimore City the power to assess all the property of a corporation that has either a constructive or actual situs within their bounds. In *Baltimore v. R. R. Co.,* 57 Md. 31, it was declared to be the purpose of the statute that the State Tax Commissioner should certify as to the value and number of shares owned by both residents and non-residents. There was no error on the part of the State Tax Commissioner in including the New Jersey real estate in his valuation. * * *

Under the statute the taxes were properly levied upon the property of the corporation without reference to the assessment and levy upon the shares of the individual share

owners, the corporation being required to pay the taxes on the shares, and to charge the same to the account of the respective share owners. This duty of the corporation may be enforced by law. *American Coal Co. v. Allegany County,* 59 Md. 192-197.

Machinery of Corporations Not Assessable as Real Estate. The real estate owned by a corporation is assessed by the tax authorities of the county in which it is located. It is the duty of the County Commissioners to send a copy of the assessment to the State Tax Commissioner. Under the *Code, Art. 81, sec. 141,* the value of all the shares of a corporation, as derived from all of its property, is fixed by the State Tax Commissioner and from this total he extracts the assessment so placed on its real estate. The residuum constitutes the valuation of the shares subject to taxation in the municipality where the owners reside. The personal property of a corporation is not separately assessed. Under the provision thus set forth the State Tax Commissioner must value the machinery of a manufacturing corporation for taxation as constituting a part of the aggregate value of the shares of stock and the County Commissioners cannot value the machinery as a part of the real estate. When County Commissioners thus improperly assess machinery as a part of the real estate of a corporation a writ of *mandamus* is the proper remedy for aggrieved taxpayers. *Anne Arundel County v. Sugar Refining Company,* 99 Md. 481.

Market Value of Shares of Stock and the Criterion for Their Assessment. The Tax Commissioner in assessing the capital stock of the Montgomery County National Bank proposes to disregard the earning capacity of said shares of stock of more than 17½ per cent. and the reported sales of said shares at $250 to $300 per share, and take the book value of $218,129.57 and arbitrarily deduct one-fourth of said book value, or $54,532.39, thus reducing the gross value per share to $163.59. * * * It is to be observed that sec. 159 of Art. 81 of the Code, which directs the Commissioner to make the assessment, contains no specific directions as to the manner in which the value of the shares is to be ascertained. * * * But as sec. 15 of the Bill of Rights requires taxation to be according to the actual worth of the property it is the duty of the Commissioner to pursue a method which results in the ascertainment of the actual value of the shares assessed by him. The value of an article is ordinarily what it will bring at a fair sale in the market. It may be safely said as a general rule that the market price of the shares of stock of the character referred to in sec. 159 is not only a fair index of their value but is the best one obtainable. That is certainly true of stocks which are currently bought, sold and quoted on the stock exchanges and other centres of trade in securities. *Schley v. Montgomery County,* 106 Md. 410.

The method, pursued by the Tax Commissioner, of ascertaining what is commonly known as the book value of bank and trust company shares by adding the capital stock, surplus and undivided profits of the corporation and dividing

the total thus obtained by the number of shares into which its capital is divided is neither a true guide to the value of the shares of a particular corporation nor one that operates equally when applied to the shares of a number of different corporations. *Ibid.*

The Commissioner in making his assessments should have especial regard to the market price of those shares. *Ibid.*

Mode of Assessment Directed by Municipal Charter. The Charter of Salisbury exempted private securities and judgments from municipal taxation. In 1896 the Legislature passed a general assessment law which provided a plan for the levying of county and municipal taxes. *Held* that this act did not repeal the provisions of the Salisbury charter with reference to the method of assessment, nor the exemption from taxation of private securities and judgments. *Salisbury v. Jackson,* 89 Md. 518.

Mortgage Bonds. Under the *Code, Art. 81, secs. 2, 94 and 214,* mortgage bonds secured by property in this State and owned by residents of Maryland, are taxable to the owners thereof and not to the corporation itself. *Consolidated Gas Co. v. Baltimore,* 105 Md. 50; *Consolidated Gas Co. v. Baltimore,* 101 Md. 555.

Mortgaged Property Assessable to the Mortgagor. Real estate should, in all circumstances, be assessed at its actual worth, and mortgaged property should be assessed to the

mortgagor, without reference to mortgage liens. This question has been settled in this State ever since the decision of the *Tax Cases,* 12 G. & J. 146, in 1841. *Allen v. Harford County,* 74 Md. 294.

Mortgages to Secure Corporation Bonds. Mortgages by a railroad company executed in favor of a trustee to secure bonds sold to investors are not taxable under the Act of 1896, Chap. 120. *Musgrove v. B. & O. R. R. Co.,* 111 Md. 629.

Municipal Taxation of Suburban Land. The Act of 1884, Chap. 58, provided a new system of government for Hagerstown, enlarging the boundaries of the city so as to include what was known as "Valentine's Addition." By the terms of the Act, the annexed land was not to become subject to municipal taxes until streets had been opened and graded through it, and then could only be assessed for a distance of 240 feet from the line of a street. "Valentine's Addition" had been mapped out in blocks, with designated streets, and the map recorded. But none of the streets had been accepted by the municipality, and the adoption of the new charter did not operate as an acceptance. The nearest city street to this tract of land is Mechanic street, and the facts make it clear that the property proposed to be taxed is not within 240 feet of that thoroughfare, nor within that distance of any turnpike or public road. The acceptance of the new charter by the City of Hagerstown did not operate as an acceptance of the streets that had been laid

out in this added territory. Although the dedication of these streets might have been complete, as has been urged by the appellee, but to make them public streets within the meaning of the charter there must be an acceptance of the dedication according to law. *Valentine v. Hagerstown,* 86 Md. 486.

Municipalities Entitled to a Share of State Tax on Securities. A municipal corporation within a county is entitled to a share of the thirty (now fifteen) cents levied on owners of bonds residing in such city, and as the Legislature failed to name the proportions we must assume that it was intended to be equally divided between the city and county. *Frederick County v. Frederick City,* 88 Md. 662.

Municipality Has no Authority to Enter Into a Contract to Exempt a Manufacturer for Fifty Years. In 1889 a contract was made between the City of Havre de Grace and John Faust & Son, the latter of whom agreed to move their business of manufacturing shoes to Havre de Grace and maintain in that place a shoe factory of certain dimensions, within a prescribed time in consideration of the gift to them of certain land and money toward the erection of the factory, and the exemption of the factory when erected with its stock, plant and buildings, from city taxation for fifty years. Faust & Son agreed to continuously operate the factory to its full capacity, and also agreed to give a bond of $25,000 to guarantee performance of its contract, in consideration thereof the municipality agreeing to pay to Faust & Son, the sum of $25,000, to be used in the construction of the building, to convey a designated lot of ground

for the factory building, and to exempt the factory from taxation for fifty years. The factory was erected and continuously operated for ten years, then the shoe company made an assignment for the benefit of its creditors, in 1896, to A. P. McCombs and C. H. Faust, who filed a bill in the Circuit Court for Harford County for their administration of the trust under its supervision. The shoe factory was subsequently sold to an individual, who in turn sold it to the appellant corporation. The appellant alleged that the City of Havre de Grace had levied taxes upon the shoe factory and was about to sell it for their non-payment and prayed for an injunction, which was granted. The city admitted that it has attempted to make the alleged contract with Faust & Son, but denying its power to do so, also denying that the contract had been complied with by them or their assigns in that the shoe factory had not been continuously operated to its full capacity for ten years. The Circuit Court dissolved the preliminary injunction and dismissed the bill. * * *

The Circuit Court in our opinion correctly disposed of the case, as the evidence in the record does not show the appellant to be entitled to the relief prayed for in the bill. At the time of making the contract in 1889, the only authority possessed by the city to exempt property from taxation was that conferred upon it by the local Act of 1880, which authorized it to *abate by general ordinance* any or all taxes levied by its authority for corporate uses upon machinery, etc., owned by any individual or corporation in the city and "actually employed and used in the business of manufacturing in said city" or upon the raw material used, or the

produce manufactured by such individuals or corporations. That Act evidently conferred no power upon the city to make the Faust contract. *Power Co. v. Havre de Grace,* 102 Md. 37.

It was therefore beyond the power of the city by any form of ratification to give validity to the exemption, which was attempted to be made by the present contract, of the Faust factory and plant from taxation for fifty years on condition that it was to be kept in operation for ten years. Even if we construe the contract as having been intended to exempt the factory and plant from taxation only so long as it should be actually used and operated as a shoe factory, the record shows that Faust & Son failed to perform their part of the contract in several material particulars. *Ibid.*

New Improvements Taxable When Substantially Completed. The appellants, owners of the premises at the northwest corner of Baltimore and Hanover streets, filed a petition in the City Court, praying that assessments of the improvements made by the Appeal Tax Court for the year 1907 be rescinded. Petitioners alleged that said assessment ($180,000) was illegal because the improvements were not completed on October 1, 1906, in many important respects, especially as to plastering and inside woodwork. They relied on Ordinance No. 170 by which the "Appeal Tax Court is authorized and directed to have assessed for taxable purposes all new improvements finished on or before the first day of October of every year, the said improvements to be construed as finished, when plastering and inside wood-

work are completed." The City Court found that the improvements "were so far completed on the first day of October, 1906, as to be liable to assessment," and that the assessment for 1907 was legal, but that the amount was erroneous, which was reduced to $150,000. This Court is not authorized to review a question of fact and as the record does not present any question of law to be considered, the appeal must be dismissed. As the question argued is one of importance, and one in which the public is concerned, we will briefly state our conclusion on the merits of the case. We are of the opinion that the Ordinance must be construed to mean that new improvements are to be assessed when the plastering and woodwork are substantially completed by October 1st, and this shows that they were in this instance. There was a formal opening of the building on November 1st, 1906, two months before the period began for which the taxes were to be paid, and the work to be done after October 1st was not of a character to justify us in holding that it was within the meaning of the Ordinance. *Hamburger v. Baltimore,* 106 Md. 479.

Newly Discovered Property. Under *Code, Art. 81, sec. 12,* property liable to taxation may be assessed for the current year after the prescribed time for making the annual levy. *B. C. & A. Ry. Co. v. Wicomico County,* 93 Md. 123.

No Assessment Void. No assessment can be declared void, but the City Court must assess the property in question anew. *Baltimore v. Hurlock,* 113 Md. 676.

Non-Resident Guardian and Ward. When a guardian is appointed in this State the property of the ward held by him is subject to taxation under the *Code, Art. 81, sec. 9,* in the county where he was appointed, although both guardian and ward reside in another county. *Baldwin v. Washington County,* 85 Md. 145.

Northern Central R. R. Rolling Stock Assessable in Baltimore. Assuming the home office of the appellee to be in Baltimore, it follows that its rolling stock must be assessed in that city. The right to tax the property of the appellee is no longer an open question. The rolling stock of a railroad company is not real estate under the General Assessment Act; whether it be considered as *movable fixtures,* or as personal property it was, under the terms of that Act, liable to assessment at the home office, or principal place of business of the company. *Appeal Tax Court v. N. C. R. R. Co.* 50 Md. 419.

Notice and an Opportunity to be Heard Essential to Every Assessment. Baltimore City Charter, Sec. 150, provides that before increasing the assessment of any property heretofore assessed, the Appeal Tax Court shall notify the owner by written or printed summons containing such interrogatories in regard to the property as they may require to be answered under oath, and fix a day to answer such interrogatories and to present such proof as the owners may desire. This section contemplates a hearing before action is taken by the Appeal Tax Court, when its mind is

open and unbiased, and not after, when an *ex parte* conclusion has been reached, and the natural and inevitable disposition to sustain the position taken has been aroused. *Baltimore v. Poole,* 97 Md. 70.

In the assessment of state corporation shares notice of the assessment given to the corporation itself was sufficient, and a notice to each non-resident stockholders is unnecessary because in the taxation of its shares the corporation is treated by the statute as representing the stockholders, and the tax in question was not invalid under the Fourteenth Amendment of the Federal Constitution as a taking of plaintiff's property without due process of law. *Corry v. Baltimore,* 96 Md. 310.

Notice and an opportunity to be heard are essential to the validity of every assessment for taxation. That it is a rule founded upon the first principles of natural justice, older than written constitutions, that a citizen shall not be deprived of his life, liberty or property without an opportunity to be heard in defense of his rights, and that this fundamental principle is applicable in its full force to the method by which each individual's property is valued to fix the basis of his liability for the payment of taxes. *Monticello Distilling Co. v. Baltimore,* 90 Md. 416.

Under the Act of 1908, Chap. 167, relating to the classification and assessment of property in Baltimore, "due notice" does not necessarily mean that notice should be per-

sonally served in the process of taxation, and that the notices which in this case was left at each house which was the subject of taxation constituted due notice. *Wannenwetch v. Baltimore,* 115 Md. 453.

The notice in this case was addressed to the plaintiff personally and not as trustee, yet he was thereby informed of the increase proposed to be made in the assessment, and, since he had a complete remedy by appeal to the City Court, he is not entitled to apply to a court of equity. *Baltimore v. Gittings,* 113 Md. 119.

The amount of the tax in this case, it will be seen, is fixed by the Act itself, and it is well settled that where the Legislature fixes the amount of the tax, no notice is necessary, and in the absence of clear evidence that the tax is arbitrary or oppressive, the Legislature's decision is conclusive on the Courts. *Leser v. Wagner,* 120 Md. 677; *Hyattsville v. Smith,* 106 Md. 318; *Faust v. Building Association,* 84 Md. 186.

Before increasing the assessment of any property which has been heretofore assessed, or adding any new property not valued and returned to them by the proper assessor, it shall be the duty of the Appeal Tax Court, as the case may be, to notify the owner of such property by written or printed summons, containing such interrogatories in regard to the property as they may require to be answered on oath, and appointing a certain day for such owner to answer such interrogatories, either orally or in writing, and to make such statement, or present such proof as he may desire in the premises;

and such notice shall be served on such owner or left at his place of abode at least five days (now ten days by Act of 1914) before the day of hearing appointed in such summons. *Baltimore City Charter, sec. 150.*

Whenever the Appeal Tax Court of Baltimore City shall purpose to alter or change any assessment or make any new assessment they shall, before such assessment is made, give at least five days (now ten days by Act of 1914) notice thereof in writing served upon the owner of the property to be assessed or reassessed, and if any owner be not found within the limits of said City, then to the person in possession of the property to be assessed or in whose custody the same may be, or if it be land, and no one be in the apparent occupancy thereof, then by a notice posted on said land. *Code 1911, Art. 81, sec. 203,* as amended by Act of 1914, identical with provision in *sec. 164a Baltimore City Charter.*

Whenever the County Commissioners shall purpose to alter or change any assessment, or make any new assessments, they shall, before said assessment is made, give five days (now ten days by Act of 1914) notice thereof in writing to the owner of the property to be assessed, and if such owner be not found within the limits of their county, then to the person in possession of the property to be assessed, or in whose custody the same may be, or if it be land and no one be in the apparant occupancy thereof, then by a notice posted on said land. *Code 1911, Art. 81, sec. 204.*

Obligations of Other States Taxable in Maryland—The Exemption is Limited to the State Granting it. This is

an appeal from a *pro forma* order of the Baltimore City Court whereby the Appeal Tax Court was directed to strike from the list of property assessed to the appellees, as not subject to taxation, certain bonds and certificates of indebtedness of the states of New York, Pennsylvania, Ohio, and of the cities of New York, Philadelphia, and of the County of New York, due to the appellee, a resident of this State. The question raised is whether the public debt of one state, exempted by that state, owned by the resident of another, is taxable by the state in which the owner resides. The importance of the question, in a financial point of view, can scarcely be magnified. The language of our organic law is "that every person in the State *or* holding property therein ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real and personal property" (Bill of Rights). No reference is made to the *situs* of the property as the ground of obligation; the elements of the duty are, the ability of the citizen to pay, and the protection he enjoys under the government. * * * That no state can pass any law impairing the obligation of contract is a cardinal principle of constitutional law. The inquiry is, does this maxim prohibit the imposition of taxes by a state upon the property of its citizens or residents invested in the stocks of another state, exempted by the law of that state from taxation? In the case of *Murray v. Charleston,* 96 U. S. 445, the Supreme Court of the United States declined determining the question now presented because it was not necessarily involved in that

case. Here the question arises *in limine,* and must be disposed of. * * *

The exercise of the power to tax property, or rights resting in such contracts, does not in any sense impair the contract, but rather enforces it, by asserting rights incident and and collateral to them. The contract is, by its terms, limited to the state granting it, as its authority is only co-extensive with its territory, and cannot operate on the rights and powers of other states. The *situs* of the stock being that of the domicile of its holder, his property, or "*jus disponendi,*" according to the law of nations, is subject to the sovereign powers of the state wherein he resides. Whether this power should be exercised or not is a legislative, not a judicial question. The owner being bound to contribute to the support of the government according to his worth in property, cannot complain, if he is fairly taxed, according to his ability, by the Legislature of his domicile. *Appeal Tax Court v. Patterson,* 50 Md. 373.

The prejudicial consequences of allowing citizens of this State the benefit of exemptions granted by other states are too obvious to need illustration. The tendency of capital to seek investment where it will be free from all contribution to public burdens is exemplified by instances too numerous to be mentioned. *Ibid.*

October "Final and Conclusive" Clause. No property, other than corporate property, not subject to taxation on October first in each year, can enter into the taxable basis for the ensuing fiscal year, though it become subject to taxa-

tion on the next day. The point of time, and the rule of law, which control, are alike arbitrary, and necessarily so, but are none the less final and conclusive, without authority and without argument. The power, given in the proviso of sec. 171 (of the Baltimore City Charter) to assess after October first "property escaped or omitted" in the regular course of valuation, is confined to property which was subject to taxation on October first. *Baltimore v. Jenkins,* 96 Md. 195.

To avoid confusion and uncertainty some definite period had to be adopted as the point of time, in each year, when the valuation fixed upon the property actually assessed and charged upon the books to each individual, would no longer be open to question, but would be conclusively ascertained and made binding, upon both the city and the taxpayer alike. *Hopkins v. Van Wyck,* 80 Md. 15.

Improvements upon the real estate of a corporation in Baltimore City completed prior to January 1st, are liable to taxation for the ensuing year, although not assessed to the corporation on October 1st, in the preceding year, that date being fixed by law for the assessment to individuals of property for taxation in said city. *Skinner Dry Dock Co. v. Baltimore,* 96 Md. 32.

Property liable to taxation but which was omitted from the assessment books at the time fixed by law for making the tax levy may be subsequently assessed for taxation under sec. 171 of the Baltimore City Charter. *Ibid.*

Omitted Property—When it May be Subsequently Assessed—Power to Assess for Previous Years. The local law of Wicomico County provides that the Clerk of the County Commissioners shall annually, before the first of August, deliver a copy of the assessment of his collection district to the Collector, but this provision does not prevent the County Commissioners from subsequently assessing property omitted from the levy. *B. C. & A. Ry. Co. v. Wicomico County,* 93 Md. 113.

Property which has not been put on the assessment books at the time the annual levy is made as required by law, may be assessed at any subsequent time in the current year when the law does not prohibit the adding of escaped property by the assessors. *Ibid.*

County Commissioners are required by the *Code, Art. 23, sec. 6,* to make the levy of taxes annually before the first of July. Sec. 83 of the same Article provides that taxes shall be collected within four years after being levied. The County Commissioners assessed certain property of the defendant for the years 1896, 1897, 1898 and 1899. This property, though taxable, had escaped taxation or been omitted from the levy previous to 1899. The Company refused to pay the taxes and the County Commissioners instituted suit for their recovery. The levy made by the Commissioners for 1896, 1897 and 1898 was not made in pursuance of any power conferred upon them by the statute, their authority to make a levy being confined to the current year of 1899, and the defendants are not obligated to pay

the taxes. *Ibid.* Note.—The power given to the Appeal Tax Court of Baltimore City is much broader. Sec. 171 of the Charter authorizes the Court to make assessments on omitted or escaped property for "current taxes and back taxes, not exceeding four years whenever the same may be discovered." See Act of 1914, Chap. 532. (Appendix.)

In the case of escaped or omitted property the penalty herein provided (an amount equal to one per centum per annum of the gross amount of each bill, accounting from the time the taxes became in arrear) and also interest shall be added to the tax bills for the current and back years in the same manner as if such property had not escaped or been omitted. Act of 1914, Chap. 532, amending the *Baltimore City Charter.*

Orphans' Courts Have no Power to Pass on Validity of Taxes. Orphans' Courts have no power to pass upon the validity of claims for taxes, as the exercise of such a supervision of claims would constitute the Orphans' Court a tribunal to review the action of those conducting the revenue department of the State. *Bonaparte v. State,* 63 Md. 465.

Owner May Inspect Records. "Any owner of property shall at all times be permitted to inspect the record of his own property contained in the book of assessment records." (*Baltimore City Charter, sec.* 161.) *.Bonaparte v. State,* 63 Md. 465.

Palace and Sleeping Cars Not Taxable in Maryland. This appeal is from an order of the Baltimore City Court striking from the assessment list thirty-six palace cars valued and assessed by the Appeal Tax Court at $900,000. The appellee is a corporation created by the State of Illinois and has its principal place of business in Chicago. The cars in questiion are used upon the various railroads that run into and through Maryland. These cars are not assessable in this State. That question was definitely settled by the Court in two cases. (See *Appeal Tax Court v. P. W. & B. R. R.* 50 Md. 397, and *Same v. N. C. R. R. Co.* 50 Md. 417.) There was no error in the order of the City Court. *Appeal Tax Court v. Pullman Palace Car Co.* 50 Md 457.

Partially Charitable Institutions Liable to Taxation. The Sisters of Charity of St. Joseph, incorporated by the Legislature to promote "works of piety, charity and usefulness, especially for the care of the sick, the succor of aged, infirm and necessitous persons and the education of young females," owns a farm which, with the improvements, live stock, furniture, etc., was assessed at $79,600. The evidence shows that there are one or more buildings used for academic purposes in which there are seventy-two paying scholars at $250 per annum, though this income, it is insisted, is all consumed in sustaining the benevolent object of the institution, and the school is but a means to that end. * * * In *Baltimore v. R. R. Co.* 6 Gill, 290, this Court held "all exemptions are to be strictly construed, they embrace only what is within their terms." The liability to taxation of property

appropriated partly to worship and partly to secular purposes is shown by the case of *Proprietors' Meeting House v. City of Lowell,* 1 Met. 541. * * All the property of the appellees, real and personal, used in the conduct of an academy or school for the education of young females, is a proper subject for assessment, though the same buildings may be partially used for hospital purposes or religious worship. If the property is indivisible so that the value of the several parts cannot be ascertained the amount of the net income from the academy may be capitalized as the basis of assessment. *County Commrs. of Frederick County v. Sisters of St. Joseph,* 48 Md. 43.

Patent Rights That Constitute the Basis of Stock Values. Shares of stock in a corporation the capital of which is chiefly invested in patent rights are not exempt from taxation, nor should the value of the patents be subtracted from the value of the shares; a tax levied on the holders of such shares is not in violation of Art. 1, sec. 8, of the Federal Constitution. *Crown Cork & Seal Co. v. State,* 87 Md. 687.

Paving Tax Law a Valid Exercise of Legislative Power. The decision of the questions presented on this appeal involves the construction and validity of the Act of 1912, Chap. 688, known as "the Special Paving Tax" Act for Baltimore City. The appellees contend that the Act is invalid and unconstitutional as in conflict with the Fifteenth and Twenty-third Articles of the Declaration of Rights and, also, with the Constitution of the United States. The cases

bearing upon the subject of a special paving tax are too numerous for us to attempt to review in this opinion. While there is some conflict among them they all will be found to rest upon the principle that there is a benefit to the abutting property by reason of the public improvement made with the public funds. The contention that the tax is void because the proceeds go into a general paving fund and not raised to pay for improvements specially benefiting the property assessed, we think, is fully answered by the case of *Jeliff v. Newark,* 48 N. J. Law, 102, and other cases cited in the appellant's brief. * * We hold that the Act of 1912, Chap. 688, is a valid exercise of legislative power and is free from constitutional objections urged against it. This conclusion is in accord and is supported by the principles announced by the best adjudged cases in the states and in the Supreme Court of the United States. *Leser v. Wagner,* 120 Md. 671.

Paving Tax on Property Not on Owner. In Baltimore a street paving tax is imposed on the property and not on the owner, though the city may maintain a legal action against the owner for the recovery of the tax. *Eschbach v. Pitts,* 6 Md. 71.

Penalty of Evasion. Any person who fails or refuses to give to the assessor any bonds, notes, claims or other evidences of debt, the same shall not be recovered until they have been listed and the tax paid thereon, with the addition of 50 per centum per annum from the time the tax accrued. *Code 1911, Art. 81, sec. 208.*

Personal Property Held in Trust Shall be Assessed at the Place of Residence of the Cestui Que Trust—Validity of Statute Upheld. This appeal raises the question of the validity of the Act of 1902, Chap. 486, which prescribes the method of assessment and taxation of personal property. The property involved in this case consists of railroad bonds, in the hands of a corporation of Baltimore, held in trust for two residents of Baltimore County. The Act (now sec. 215, Art. 81 of the Code 1911) provides that all securities and personal property of any kind whatsoever, not exempt, in which any resident of any county of this State, has an equitable interest, with the legal title to the same in some other person or corporation who is a resident of some other county or of the City of Baltimore, shall be valued and assessed for state and county taxation to the equitable owner in the county in which he or she may reside, to the extent of his or her equitable interest, and the taxes due thereon shall be paid by the holder of said legal title to the collector of taxes for the county or city in which said property is so valued and assessed. The corporation, in this case, was assessed for the securities, an appeal was taken to the City Court, and that tribunal, relying on the Act of 1902, directed the Appeal Tax Court to abate the assessment. * * * * *

As the Act of 1902 specifically fixes the *situs* for the taxation of personal property held in trust at the residence of the beneficial owner, the order appealed from was properly passed unless the Act is to be regarded as in conflict with the Bill of Rights, as is contended by the appellants. * * But

we find nothing in the interpretation of the 15th Article of the Bill of Rights adopted in *Latrobe v. Baltimore,* 19 Md. 13, as that case has been construed by this Court, to impair the validity of the Act of 1902 in regulating the assessment and taxation of the class of personal property involved in the present case. *Baltimore v. Safe Deposit & Trust Co.* 97 Md. 659.

When property is held in trust there are two persons each of whom in a certain sense is its owner. The trustee who holds the title is the owner in a legal and technical sense, but the *cestui que trust* is the beneficial and substantial owner. We do not think that the Legislature has exceeded its power over the subject of taxation or violated any of the provisions of the Bill of Rights or Constitution in providing that personal property of the kind involved in this case, shall, for purposes of assessment and taxation, be treated as belonging to its substantial owner and not to its technical holder. *Ibid.*

When the personal property held in trust consists of stock of corporations in this State, the Act of 1902, being in *pari materia,* the existing laws requiring the corporation to pay the taxes on its stock for its stockholder, the two laws should be construed together and the residence of the *cestui que trust* be treated as the *situs* for taxation and the taxes be paid by the corporation in accordance with the uniform system in force in this State for the payment of such taxes. *Ibid.*

We must not be understood to hold that the Act of 1902 is valid in so far as it may conflict with the special provision made by Sec. 51 of Art. 3 of the Constitution for the taxation of goods and chattels permanently located, or of mortgages and the debts thereby secured, or that the Act was intended to apply to leaseholds or any interest in lands. *Ibid.*

Where a person in this State has an equitable interest in property, the legal title to which is in the name of a non-resident, such equitable owner shall pay the taxes on it. *Code 1911, Art. 81, sec. 2.*

Personal Property of a Cemetery Company Taxable. The personal property of a cemetery company such as carts, horses, etc., are subject to valuation and assessment. *Appeal Tax Court v. Baltimore Cemetery Company,* 50 Md. 435.

Persons, not Property, Taxed. In the State of Maryland no property is liable to taxation; persons are liable, under the Bill of Rights, to be taxed in respect to property. *Tax Cases,* 12 G. & J. 130.

Taxes of the kind here dealt with, are, under Article 15 of our Declaration of Rights, levied not *on things,* but on the *owners* of things; and the value of the thing owned fixed the measure of the owner's liability to contribute in taxes towards the support of the government. *Appeal Tax Court v. Patterson,* 50 Md. 366; *U. S. Elec. Light & Power Co. v. State,* 79 Md. 63; *Carstairs v. Cochran,* 95 Md. 500.

Though the language employed by the statute, if read literally, may indicate an intention to impose the tax on the

property, that is not its meaning when considered in connection with the settled policy of Maryland as announced in the Declaration of Rights. *Carstairs v. Cochran,* 95 Md. 501.

Piers Extending Into the River Beyond the City Limits are Taxable by the City. The Western Maryland Tidewater Railroad constructed a coal pier and a freight pier on the Patapsco, projected from the bulkhead into the water to the pierhead line with the water flowing under them. The whole cost of the piers was $400,000. The appellant states that the property is properly assessable for only $35,000 in the city, but that the rest is illegal and void because the property is not within the city or within the assessing power of the Appeal Tax Court. The contention of the appellees is that inasmuch as the piers are attached to and project from the land of the appellant which borders on this navigable river, and are immovable structures they are taxable by the city. It is clear that the Legislature never intended that such improvements should be cut in two at the point of high water mark on the bank of the river when they were made, and part be taxed by the city and the rest by the county. Without this right to use the land, which is in Baltimore City, the improvements would be useless, as they are dependent upon the land for their existence. They are so situated as to be dependent upon the city for police and fire protection, and if the appellants' theory be correct they would practically have neither. * * * We are of the opinion that the city's boundaries (in view of the evident intent of the Legis-

lature in fixing said boundaries) are coincident with those of the proprietors of lands bounding on this river, which have been extended under and by virtue of the statute and that these piers are such improvements as come within the principle referred to above. *Western Maryland T. R. Co. v. Baltimore City,* 106 Md. 561. See, also, *Goodsell v. Lawson,* 42 Md. 373; *Tome Institute v. Crothers,* 87 Md. 584; *Hess v. Muir,* 65 Md. 603.

Powers and Duties of County Commissioners in the Levying of Taxes. Under the authority conferred upon County Commissioners by *Code, Art. 25, sec. 7,* to "levy all needful taxes" and to "pay or discharge all claims against the county expressly or impliedly authorized by law," the Commissioners have the power to enter into a contract for a fireproof vault for the safekeeping of the records of the Circuit Court, and to levy taxes to pay the cost thereof. *Smith Fireproof Co. v. Munroe,* 97 Md. 371.

The County Commissioners are a body politic; a corporation charged with the administration of the county affairs, and can only do what their charter powers, by express language or necessary implication, permit. In this case the appellant asked for an injunction against the County Commissioners to prohibit them from paying to the Clerk of the Circuit Court for Montgomery County the sum of six hundred dollars for the preparation of an index of the public records of the county, appellant alleging that, under the law, the making of this index was a part of the regular duties of the Clerk, and that there was no authority for giving him

extra pay therefor. The Clerk plead a special order of the Circuit Court ordering him to prepare the index, said order containing a clause that the clerk "shall be paid therefor by said county such compensation as this Court may deem reasonable." The Circuit Court dismissed the bill for an injunction, and in this the Court erred. The injunction ought to have been granted. The power and right of the court of equity to interfere by injunction in such case is unequivocally asserted in *Baltimore v. Gill,* 31 Md. 393, and in no case since has that principle been questioned. *Peter v. Prettyman,* 62 Md. 571.

It is no longer an open question in this State whether a taxpayer, having no other special interest different from that of the public, may crave the interference of the court of equity to prevent illegal taxation. *Ibid.*

If there be any law requiring the Clerk to do this work, at public expense, it would be the duty of the County Commissioners to provide for its payment; but if the duty was upon the Clerk to make this special index, and the intention of the law was that he should be paid in another way, then the claim is improperly referred. If, by law, the Court was authorized to require this duty of the Clerk at public expense, then the County Commissioners were bound to pay for it, but not otherwise. *Ibid.*

It was the duty of the Clerk to do this work and to get his compensation therefor in fees from persons desiring copies of instruments, and if he did not collect such fees, the county cannot be charged with the result of his negligence. *Ibid.*

Appellants in this case sought an injunction against the Commissioners of Baltimore County from including in the levy for 1878 three certain items, viz: "Contingent expenses," "Deficiency in back levy of 1877," and "Interest on loan authorized by Act of Assembly," aggregating $83,000. Each of these items seems to be authorized by law and were properly included in the levy of 1878. But there is no question as to the jurisdiction and authority of the Circuit Court for Baltimore County to restrain the Commissioners from levying taxes for purposes not contemplated by the law. *Webster v. Baltimore County*, 51 Md. 399.

In the appointment of a person as tax collector who at the time was a defaulter for taxes collected in previous years, County Commissioners do not make themselves responsible to the sureties on his bond. *Frownfelter v. State*, 66 Md. 85.

Section 17 and sections 157 and 166, of Article 81 of the Code, confer ample powers on County Commissioners to revalue previously assessed property and to assess new acquisitions of property. It is essential, however, that the owner should have notice in each case. A subsequent application by a taxpayer for a correction does not cure a lack of notice, although the party assessed refuses to give the Commissioners the name of the owner of the property. The taxpayer's remedy, in the case of failure to receive a notice, is an injunction and not a writ of mandamus. *Baltimore County v. Winand*, 77 Md. 524

The County Commissioners have the exclusive power to levy and collect taxes, and in some cases to value and assess property in the manner pointed out by law. While they constitute a tribunal with limited and statutory powers, yet acting within the scope of such powers, their action is conclusive, and cannot be reviewed by a court of equity. The collection of taxes will not be interfered with or restrained by a court of equity for mere irregularities in their proceedings, or for any hardship that may result from their collection. It is only when the tax itself is clearly illegal, or the tribunal imposing it has clearly exceeded its powers, or the rights of the taxpayers have been violated, that the interposition of the special remedy by injunction can be successfully invoked, and only then when no appellate tribunal has been created with power to remedy the wrong. *Allegany County v. Union Mining Co.* 61 Md. 548.

Where several tracts of land are returned by the owner, each tract being known by a name, and each having a specific number of acres and particular location, then it is a manifest error on the part of the Commissioner to change the statement and assess the several tracts as one body of land. *Ibid.*

County Commissioners cannot change the method of assessing property, as provided by law, but they have the power to alter the assessments, as made by the assessors, if the property has diminished or increased in value. *Ibid.*

Where, under a local law, the Treasurer of Harford County was required to remit the full amount of State taxes

collected to the State Treasurer, his commissions are payable by the county. *Allen v. State,* 98 Md. 700.

Power of Appeal Tax Court to Classify. The Appeal Tax Court of Baltimore City has ample authority and power to list and classify Annex property, as subject to the full city rate, when the property reaches that condition of development provided by the Acts of 1888 and 1902, and it has the further power to give the necessary notice and a hearing to the property holders whose property is to be affected thereby. *Sams v. Fisher,* 106 Md. 169.

Power of Legislature to Exempt. It has been settled by repeated decisions of this Court that Article 15 of the Declaration of Rights constitutes no bar to the right of the Legislature to exempt certain kinds of property from taxation when that exemption is not an arbitrary discrimination in favor of a particular class. *Simpson v. Hopkins,* 82 Md. 488.

Private Alleys Assessable. When the owner of a tract of land conveys a part thereof describing one line as binding on an alley of a designated width to be left open for use in common, and said alley is a part of the land of the grantor and not a public alley, then such alley may be assessed for purposes of taxation to the grantor and it is not exempted because of the creation of a private easement on it. *Hill v. Williams,* 104 Md. 595.

Promise to Pay Taxes Bars the Four-Year Limit. Where taxes have been levied and uncollected for more than four years (when under the *Code, Art. 81, sec. 33,* parties may plead in bar of recovery) a promise on the part of the taxpayer to pay such taxes, made after the expiration of the time prescribed, must be held to take them out of the operation of the statute. The collector has the right in such cases to enforce their payment by execution and sale of the property. *Perkins v. Dyer,* 71 Md. 421.

Public Improvements and Taxes Incident Thereto Left Exclusively to Municipalities. The quesion as to whether or not the paving of a street or any other public improvement will benefit property in the vicinity, is a question for the exclusive judgment of the Mayor and City Council, and their action is final and conclusive. Courts have no power, under the law, upon the demand of property owners who are taxed, to review the action of the city authorities. *Baltimore v. Johns Hopkins Hospital,* 56 Md. 28.

The presumption is that those who are specially assessed for certain public improvements have been benefited thereby. *Ibid.*

Assessments for public improvements must be reasonable and equal, and when they fail in this respect they cease to be a contribution to a common burden, or a tax, and must be regarded as an extortion and confiscation, against the execution of which any citizen may appeal to the courts for relief and protection. *Ibid.*

The imposition of a local assessment for public improvements is an exercise of the taxing power, and an ordinance for the repaving of a street is not void because it failed to provide notice upon the owners of adjacent property. *Ibid.*

The action of the Mayor and City Council of Baltimore in delegating to the City Commissioner the authority to ascertain the cost of repaving a certain part of Pratt street, and the apportionment of cost to each property owner, was proper and legal, the work assigned to the Commissioner being ministerial in its character and confined chiefly to matters of measurement and arithmetical calculation. *Ibid.*

Public Improvements not Invalid Because Contractors did not Execute Contract Strictly According to Its Terms. By an Ordinance of 1881, the Mayor and City Council of Baltimore directed Gay street, between Pratt and Aisquith streets, to be repaved with "Camp's Patent Process of Belgian Block Pavement," under the provisions of an Ordinance approved in 1874. The Ordinance of 1881 provided that two-thirds of the cost of this repaving should be paid by the owners of the property abutting on the street, and that the other one-third should be defrayed by the city. An agreement was made between the city and the owners of the patent for the paving and kerbing designated by the Ordinance. The repaving, however, was not commenced until March, 1882, and was finished sometime in the following fall, being accepted and fully paid for by the city. Thereupon an injunction was procured at the suit of the appellee restraining the collection of the tax, and from the decree

making the injunction perpetual this appeal has been taken. * * *

The validity of the tax has been assailed upon two grounds, viz: first, because the contract between the city and the contractors is alleged to be illegal and void; and secondly, because the work actually done under the contract is claimed not to be in accordance either with the contract or with the Ordinance. It was contended that the contract was invalid because the work had not been done within the time specified by it and that though the Ordinance directed the repaving to be done with "Camp's Patent Process of Belgian Block Pavement," yet the contract, made under that Ordinance, provided that the work should be done in some other and different manner. It appears that the patent provided that the bed of the street should be rolled at right angles to the kerbing, whereas the contract provided that it either might be rammed or rolled, and that while the patent provides that the stones when laid shall be placed diagonally or obliquely to the road bed, the contract provides that they should be laid at right angles to the road bed, and that while the patent provides that the blocks should be rolled with a heavy steam roller, the contract provides that each block shall be rammed separately with a hand rammer. * * *

As the provision in the patent with respect to the rolling of the street bed before the stones are laid thereon, was designed to secure a solid bed it is not perceived that the clause in the contract allowing the street bed to be either rolled or rammed, instead of being only rolled, can possibly

create any repugnancy. The object aimed at was precisely the same in both instances, and the mere mode of accomplishing that object makes no practical or substantial difference. There is no inconsistency between the patent and the contract in regard to the mode by which the stones, when laid, are to be pressed or driven to a solid foundation. The application of force was required to accomplish this result. Whether the force was applied by the one or the other agency was wholly immaterial, provided the same purpose was accomplished. Whilst the contract provided that the stones when laid should be covered with sand; it also provided by declaring that Camp's process should be used, that the spaces between the stones should be filled in with elastic cement; and there was not in fact, as shown by the evidence, any irreconcilability between them in this respect. * * *

The objection that the stones were separately rammed instead of being rolled with a steam roller, cannot be allowed to prevail. We are at a loss to see what possible difference it can make whether the one or the other means was adopted to accomplish the result intended, namely, the driving of the stones home to a solid bearing or foundation. It can scarcely be seriously contended that this pavement after being completed, is any the less Camp's patent process because a rammer was used instead of a steam roller to force the stones to a solid foundation. The one mode is certainly a mechanical equivalent to the other. These objections, which relate to the manner in which the work was done, even though conceded to be departures from the terms of the contract, could not on that account, be allowed to defeat the collection of the

tax. This doctrine is fully supported by authority. It follows, therefore, that the decree appealed from was erroneous; and that it must be reversed and the bill be dismissed. *Baltimore v. Raymo,* 68 Md. 569.

Purpose of the "Landed Property" Act of 1902 Relating to Annexed Territory. The property involved in this controversy is situate in a block of ground bounded by North avenue, St. Paul, Charles and Twentieth streets. The bill avers that the block of ground is surrounded by streets, paved and improved, but as it does not contain six dwellings or storehouses within its boundaries, the appellant is not liable to pay taxes for city purposes at a higher rate than 60 cents per $100 of the assessed value of the property. * * * It is clear, from the facts in the case, that the property in question is not landed property within the meaning of either the "Foutz Act" or the provision in Section 19 of the Annexation Act of 1888. It is improved city property; similar to other property within the old city limits and by the express terms of the Act, "from and after the year 1900, the property, real and personal in the territory annexed, shall be liable to taxation and assessment, in the same manner and form as similar property within the present limits of the city." * * * *

By the Act of 1902, Chap. 130, landed property was construed to mean real estate, whether in fee simple or leasehold, and whether improved or unimproved. We fully agree with the contention of the appellee that this Act was passed to prevent property which was in no sense city property

from being subject to the full city rate until certain things were done by the city. It certainly was never intended to affect the property which, at the time of its passage, was not only landed property but not even suburban property, but in the fullest sense of the term, city property, bounded by the streets, and enjoying every advantage and facility that attaches to similar property within the old city limits. *Hiss v. Baltimore,* 103 Md. 623.

There are two conditions under which the full city rate may be imposed upon this annexed property. First, when the "landed property" has been divided into lots and compactly built on with a view to fronting on a street not yet constructed but contemplated by the persons who project it or build with reference to it, though the municipality has not opened such street or accepted a dedication of it. Secondly, when, though still "landed property," that is, rural property, in the sense that it has not been divided into lots, it is intersected by opened and constructed streets—by municipal authority—which streets form blocks and upon which blocks there are at least six houses. In the second instance, though the residue of the block be unimproved or be not laid out in lots, the whole block will be liable to be taxed at the current city rate, as soon as six houses are erected on it. *Sindall v. Baltimore,* 93 Md. 535.

Railroad Exemption Not Transferable. The exemption from taxation granted by the Act of 1886 to the Baltimore & Eastern Shore Ry. was intended to apply only to that Company and could not be transferred to another corpora-

tion, without express statutory authority. *B. C. & A. Ry. Co. v. Wicomico County,* 103 Md. 277.

Railroad Rolling Stock not Assessable When its Principal Office is out of the State. It is contended on the part of the appellee that the depot and stations of the appellant in the City of Baltimore must be regarded as its principal office of business in this State, and that being so, the domicile of the corporation must be taken as located there so far as this State is concerned, and in the absence of legislation fixing a different situs for the rolling stock of the appellant, the portion of it assessed must be regarded as located in Baltimore. We are not able to perceive, however, that this position is tenable. The assessment Act must have a reasonable and not a strained construction; and no fiction can justify us in saying that any portion of the rolling stock is *permanently located* in Baltimore. Whether the home office of the corporation be at Philadelphia or at Wilmington is a question we need not decide, but it is quite certain that it is not in Baltimore; and the fact that Baltimore is one of the termini of the appellant's road can make no difference in this respect. It is clear, as the law now stands, there can be no well founded claim to assess this property in Baltimore. *P. W. & B. R. R. Co. v. Appeal Tax Court,* 50 Md. 415.

Railroad Taxable as Lessee. Where a railroad company held real property under a city ordinance providing for a formal lease for 99 years from the city to the company, the company is the substantial owner and taxable on the

leasehold interest. *Appeal Tax Court v. R. R. Co.*, 50 Md. 276.

Mortgage bonds issued by a corporation are taxable to the holders thereof in the counties where they reside. *Musgrove v. B. & O. R. Co.*, 111 Md. 635.

Railroad Tunnels and Bridges not Separately Assessable. Regarding the Act of 1876, Chap. 159, as unrepealed by the General Assessment Act, it is quite plain that the tunnel under Hoffman street, belonging to the Union Railroad Company, forming a part of the roadway, and the bridges in the line of the road, were not objects of separate valuation and assessment. It is only the road as such, irrespective of the tunnels or bridges that should have been valued and assessed, that part of the road running through the tunnel to be valued and assessed at the same rate that any other equal portion of the road may be valued. The appellee has an easement in the way occupied by its road, and whether that easement be under or over the public street it is an element of value to the road, and as such should be included in the valuation of the road itself. But few railroad companies have anything more than a mere easement in the ways occupied by their roads, and it has never been held that because the company did not own the freehold estate in the bed of the road that nothing but the mere superstructures there could be assessed to the company. *Appeal Tax Court v. W. M. R. R. Co.*, 50 Md. 274.

Receivers' Liability for Taxes. The ordinary remedies for the collection of taxes against property which is under

the control of a court of equity are suspended, and payment can be secured only on order of the court. It is the duty of the Collector to apply to the court for the payment of the taxes, interest and penalties. When the Collector fails to so apply and the fund in the receiver's hand is disbursed he cannot recover the penalty from the receiver. *Blakistone v. State,* 117 Md. 237.

Real Estate to be Assessed at Its Actual Value Without Regard to Mortgage Liens. The appellant, as trustee of his wife, is the owner of a farm in Harford County, which is assessed for taxation on the assessment books of that county at $8,320. This farm is encumbered with mortgage liens amounting to $16,250. The appellant applied to the County Commissioners to have the whole of said assessment abated, because of said mortgage liens, but his application was refused. His farm was about to be sold for the taxes, when he applied to the Circuit Court for an injunction. His application was refused and hence this appeal. The only question raised here, or intended to be raised, is whether the real estate which is mortgaged should be assessed and taxed at its actual assessed value, without regard to the mortgage liens, or whether the amount of such liens shall be first deducted from the assessed value in order to ascertain the taxable value. The appellant contends he is entitled to the deduction mentioned, and he bases his contention upon the 15th Article of the Bill of Rights, which provides, among other things, that "every person in the State, or person holding property therein, ought to contribute his

proportion of public taxes for the support of the Government according to his actual worth in money and personal property." If this were a new question, its importance would demand a full consideration and discussion; but it has been definitely settled by our predecessors in the cases known as *"The Tax Cases* under the Act of 1841" reported in 12 G. & J. 117, in which without delivering an opinion, the rulings of the lower Court, refusing the deductions and abatements now claimed, were affirmed. *Allen v. Harford County,* 74 Md. 294.

Under the Act of 1841 mortgages were taxed, but under our present revenue system they are exempt. We have, however, in recent cases clearly recognized the power of the Legislature, notwithstanding Art. 15 of the Bill of Rights, to tax the full value of both the investments of mortgagees in mortgages, and the property mortgaged to secure such investments. *Appeal Tax Court v. Rice,* 50 Md. 319; *Baltimore v. Canton,* 63 Md. 237. The expediency of such taxation it is for the Legislature alone to determine. *Ibid.*

Reclaiming Taxes. Nothing we have said is to be taken as holding that taxes actually paid under the Act of 1892 can be reclaimed. A taxpayer may waive his right to be heard, and if he voluntarily pays a tax which the Legislature has the right to impose but which because of defects in the statute could not have been collected by legal process he cannot be allowed to complain that he had no notice of the assessment or had no opportunity to contest it. *Monticello Co. v. Baltimore,* 90 Md. 433. (Note.—The defect in the

Act of 1892 as to notice, was cured by the Act of 1900, Chap. 320.)

Reclassification Notice. When the Appeal Tax Court is informed that property within the Annex territory has been brought within the conditions prescribed by the Annexation Act which warrant the imposition of the regular city rate of taxation they should first give notice to the owner of their purpose to impose that rate fixing a time and place of hearing. A property owner who has not received a proper notice is entitled to an injunction restraining the collection of the tax. *Baltimore v. Poole,* 97 Md. 67.

The "due notice" required by the Act of 1908 for the classification of property does not necessarily mean that notice should be personally served in the process of taxation. The notices in this case were left at each house and that constituted due notice. *Wannenwetch v. Baltimore,* 115 Md. 453.

Reclassification Power. The Appeal Tax Court has the power to give the necessary notice to property owners whose property is to be affected by its classification as city property. *Sams v. Fisher,* 106 Md. 155.

Recovery of Taxes. It has been repeatedly held in this State that where an Act authorizes a tax it may be recovered in an action of assumpsit. *Baltimore v. Howard,* 6 H. & J. 383; *Dashiell v. Baltimore,* 45 Md. 615; *Appeal Tax Court v. W. M. R. R. Co.,* 50 Md. 274; *Bassett v. Ocean City,* 118 Md. 119.

Registration Does not Determine Residence. The sole fact that the names of the appellee in this case appeared upon the registration books and he voted in Harford County at the November election, does not of itself determine his residence. *Kinehart v. Howard,* 90 Md. 5.

Relinquishment of Taxing Power by State. It has been established by numerous decisions of this Court, of the Supreme Court of the United States, as well as by the whole current of authority in this country, that the power of taxation will never be held to be relinquished by the State unless the intention to relinquish is declared in clear and unambiguous terms. *Appeal Tax Court v. University of Md.,* 50 Md. 464.

"Residence" and "Domicile." There is a broad distinction between domicile in a legal and technical sense, by which one's civil status and the rights of persons and property are determined and residence required by the Constitution, as a qualification for the exercise of political rights. "Domicile" in a legal sense, has, as we all know, a fixed and definite meaning, and yet the word domicile is nowhere to be found in the Constitution. Residence, although analogous in many respects, is not to be understood in the same sense as domicile in law by which the rights of persons and property are governed. *Schaeffer v. Gilbert,* 73 Md. 70.

Residence is Where One Resides the Greater Part of the Year. The personal property of residents of this State

shall be subject to taxation in the county or city where the resident *bona fide* resides for the greater part of the year for which the tax may or shall be levied, and not elsewhere, except goods and chattels permanently located, which shall be taxed in the city or county where they are so located. *Constitution of Maryland Art. 3, sec. 51.*

"Residence," as used in the Constitution, does not mean one's permanent place of abode, where he intends to live all his days, or for an indefinite or unlimited time; nor does it mean one's residence for a temporary purpose, with the intention of returning to his former residence, when that purpose shall have been accomplished, but means one's actual home, in the sense of having no other home, whether he intends to reside there permanently or for a definite or indefinite length of time. *Schaeffer v. Gilbert,* 73 Md. 70.

Residence Issues Arising in Decedent's Estates. A will must be probated in the county in which the testator resided as provided by the *Code, Art. 93, sec. 334,* and when it is offered in an Orphans' Court, the Court has the power to inquire and decide as to whether decedent was a resident of that county at the time of his death. *Oberlander v. Emmel,* 104 Md. 260.

As the right to admit the will to probate depends upon the residence of the testator at the time of his death, the jurisdicion to decide *where* that residence was, is involved in and is an inseparable part of the power to grant the probate. *Stanley v. Safe Deposit Co.,* 87 Md. 454. (Also

see *Harris v. Pue,* 39 Md. 542; *Shultz v. Houck,* 29 Md. 24; *Ensor v. Graff,* 43 Md. 294.)

Residence not Dependent on Intention. In our judgment a change of domicile, so far as it respects the question of taxation, could not be effected by intention alone, and without actual removal. So long as appellant continued to reside in Charles County he was liable to taxation as a citizen thereof. He notified the County Commissioners of his purpose to remove before the levy was made, but the levy for the year was actually completed while he so continued to reside in Charles County, and before he removed therefrom, and he is chargeable with the taxes assessed for that year. *Stoddert v. Ward,* 31 Md. 568.

A mere declaration of an intention to abandon will not be sufficient. *Vogler v. Geiss,* 51 Md. 410.

We find nothing to indicate that Miss Dickinson intended to abandon the St. Paul street house as a residence. Her absence from the house was always temporary in character and with an intention to return. It was generally by medical advice, to regain her health. It is obvious that she did not intend to abandon the house as a place of residence. *Barnett v. Dickinson,* 93 Md. 268.

The provision of the State Constitution provided that personal property shall be taxed in the county in which the owner resides for the greater part of the year does not apply to the taxation of corporations. *B. C. & A. Ry. Co. v. Wicomico County,* 93 Md. 114.

The burden of proof is on the party claiming to have made a change of residence. *Judson on Taxation,* p. 532 (citing *Mitchell v. United States,* 21 Wall. 350; *Desmare v. United States,* 93 U. S. 605; *Dicey on Conflict of Laws,* Am. Ed., p. 131).

Where it is shown that a person has acquired a residence in one locality, he retains the same until it is affirmatively shown that he has acquired a residence in another locality. *Turner v. Crosby,* 85 Md. 180.

Temporary absence, with a continuous intention to return, will not deprive one of his residence, though it extends through a series of years. *Langhammer v. Munter,* 80 Md. 518.

If one engages in business in another state, but leaves his family permanently at his former place of residence, he remains taxable there. *Nugent v. Bates,* 51 Ia. 77; *McCutchen v. Rice Co.,* 7 Fed. 558.

Residence of Corporations. A corporation incorporated by another state is a resident of such state only: *Bank v. Earle,* 13 Peters, 588; *Ohio & Miss. R. R. Co. v. Wheeler,* 1 Black, 295; and must be treated as a natural person would be who resides in such state. *Louisville R. R. Co. v. Letson,* 2 Howard, 555.

Residence of Students. We agree that where a residence of the appellee at the college, for the purpose of pursuing his studies would not, in itself, be sufficient to prove that

he meant to abandon his original residence. In the absence of other proof, the law would presume he was there for the purpose of pursuing his studies, and this purpose being accomplished, he intended to return to his former residence. But the appellee, who went from Harford County to attend college in Baltimore City, has lived in the latter place for seven years, has supported himself there, and has transferred his registration as a voter from the county to the city. These facts, we think, show a *bona fide* intention to abandon his former residence to make his actual residence in Baltimore City. *Schaeffer v. Gilbert,* 73 Md. 71.

Residents Who Remove After Levy Assessable. So long as a person continues to reside in a county he is liable to taxation as a citizen thereof, and if the levy for the tax is completed before he removes therefrom he is chargeable with the taxes for that year. *Stoddert v. Ward,* 31 Md. 566.

Right to Assess for Particular Benefits. The right to assess property in particular to the extent that it is deemed specially benefited by local improvements is to be referred to the power of taxation and has been recognized and sanctioned in all the states. The theory on which such assessments are made is that those whose property is thus enhanced and who thus receive peculiar benefits from the improvements should contribute specially to defray its cost. *1 Lewis Eminent Domain, sec. 5; Gould v. Baltimore,* 59 Md. 378; *Hagerstown v. Startzman,* 93 Md. 609. The power to make such assessments has been expressly granted to the

Mayor and City Council of Baltimore and has been exercised by it for a long time. (*Alexander v. Baltimore,* 5 Gill, 383.) *Lauer v. Baltimore,* 110 Md. 447.

Rolling Stock. The total assessment and valuation of rolling stock of railroad companies made in the assessment district in which is the legal situs of said rolling stock, shall be divided among the counties and the City of Baltimore in proportion to the mileage of the railroads located in such counties and city respectively. When the boards of review in the counties and City of Baltimore have completed the assessment they shall report to the State Tax Commission the total assessment of the rolling stock so made in their respective counties and in said city, and the assessment district in which is the situs of said rolling stock, and the State Tax Commission shall thereupon make the apportionment of such total valuation among the several counties and the City of Baltimore according to the mileage therein, certifying the same to the county boards and the Appeal Tax Court of Baltimore; and such proportions, respectively, shall thereafter be valued and assessed for purposes of taxation in such respective *counties* and Baltimore. *Code 1911, Art. 81, sec. 212.*

The rolling stock of a railway whose road extends through other counties of the State is not taxable in the county in which the principal office of the corporation is located since the Acts of 1896, Chaps. 120 and 140. *B. C. & A. Ry. Co. v. Wicomico County,* 93 Md. 131.

Palace and sleeping cars owned by a foreign corporation having its principal place of business outside of Maryland and leased to railroad companies which use them upon their various roads in Maryland are not taxable under the Act of 1896, Chap. 260. *Appeal Tax Court v. Pullman Co.*, 50 Md. 456.

Savings Banks Tax a Tax on the Franchise and not on Property of Banks. Every savings bank shall pay annually a franchise tax to the amount of one-fourth of one per centum on the total amount of deposits held by such savings bank. The State Tax Commissioner shall calculate said tax and apportion one-fourth to the State and three-fourths to the county or city in which said bank is situated, Baltimore's share to be reported to the Appeal Tax Court. *Code 1911, Art. 81, sec. 91.*

In *Massachusetts v. Provident Inst.*, 12 Allen, 312, it was contended that a tax upon the deposits of savings banks was unconstitutional because it was an arbitrary tax upon the property of a certain class of corporations only and not laid uniformly upon all property in the State, but it was held by the Court to be a tax upon the franchise of such corporations and not upon their property. Upon appeal to the Supreme Court of the United States, *Provident Inst. v. Mass.*, 6 Wallace, 630, the judgment in this case was sustained. *State v. P. W. & B. R. R. Co.*, 45 Md. 380.

The securities in which the deposits of a savings bank are invested are not taxable. The capital stock and surplus

funds of a savings bank, distinct from its deposits, are taxable after assessment and levy. *Westminster v. Westminster Savings Bank,* 92 Md. 63.

Deposits of a savings bank invested in ground rents are not taxable. *State v. Central Savings Bank,* 67 Md. 292.

Money deposited in savings banks in other states, paying interest, and owned by residents of this State are taxable. See "evidences of debt" clause, *Code 1911, Art. 81, sec. 2.*

If the defendant bank still carried on substantially the business of a savings bank the mere fact that under its enlarged powers it did other banking would not relieve it from liability for the franchise tax imposed on the deposits of savings banks, but it would not be liable for that tax if, since the Act, it has conducted a general banking business although it allows interest on deposit accounts of over six months standing. *State v. German Savings Bank,* 103 Md. 197.

A savings bank which has a capital stock is subject to the franchise tax imposed by the *Code, Art. 81, sec. 86,* on "every savings bank, institution or corporation organized for receiving deposits of money and paying interest thereon." *Fidelity Savings Bank of Frostburg v. State,* 103 Md. 206.

Schedules of Personal Property. Every person whose property, or some part thereof, has not been assessed. shall, when required by the Collector of any county or the Appeal Tax Court of Baltimore City, give to such Collector, or

Appeal Tax Court, a full and particular account of his personal property (in said county or city), and of all the personal property in his possession, or under his care and management, liable to be assessed, and which before that time shall not have been assessed, and the name of the person to whom it belongs. *Code 1911, Art. 81, sec. 21.*

If any person when required by the County Collector or Appeal Tax Court, or after ten days' notice, neglect to render the account required in section 21, he shall forfeit a sum not exceeding one thousand dollars. County Collectors or the Appeal Tax Court shall, on their knowledge, and on the best information they can obtain, value the property of such person to the utmost sum they believe the same to be worth in cash, and the County Commissioners or the Appeal Tax Court, shall assess such person so returned, and the same shall be collected as the assessment. *Code 1911, Art. 81, sec. 22.*

Securities Assessed at Market Value. All bonds and certificates of indebtedness made by any corporation and owned by residents of this State shall be subject to assessment and valuation at their market value for taxation to the owner thereof in the county or city in which he may reside. Act of 1896, Chap. 143.

Municipal taxes on corporate stock can be levied only upon the valuation thereof by the State Tax Commissioner, the municipality having no power to increase or diminish such valuation. *Clark Distilling Co. v. Cumberland,* 95 Md. 471.

Taxes on corporate stock are not due by the corporation but by the individuals who own the stock, the corporation for the sake of convenience being made the agent of the state and county to collect the tax, and being entitled to charge the same against the stockholder. *Baltimore v. Allegany County,* 99 Md. 5; *Crown Cork & Seal Co. v. State,* 87 Md. 696.

The property of a corporation cannot be levied on and sold for taxes. *Hull v. Southern Development Co.,* 89 Md. 9.

Securities Owned by Schools, Etc., not Exempt. The railroad and other stocks owned by St. Mary's Seminary, the income of which is used for the benefit of students, are not exempt from taxation. *Appeal Tax Court v. St. Peter's Academy,* 50 Md. 347.

Shares of Stock and Other Corporate Property Separate and Distinct. The most complete proof that the property belonging to the corporation, and the shares in such corporation in the hands of the holders of such shares, are distinct and separate properties, is the conclusion reached by the Supreme Court of the United States in the case of *Farrington v. Tennessee,* 95 U. S. 687, that the property of a corporation and the shares of a corporation may both be taxed in the hands of the respective owners, by the state in which said corporation has its *situs,* and in which also such shareholders reside, and that such taxation is not double. This ruling affirmed in *Dewing v. Perdicaries,* 96 U. S. 196; *Appeal Tax Court v. Gill,* 50 Md. 387.

Shares of Stock as Valued by State Tax Commission Binding on Counties and Cities. Under the *Code, Art. 81, sec. 141,* as amended by the Act of 1896, Chap. 120, it is made the duty of the State Tax Commissioner to furnish to the County Commissioners of each county in which the shareholders of a corporation reside, a statement of the valuation put by him on the stock, and unless that valuation is changed by the Comptroller of the State Treasury and the Treasurer, the state, county and municipal taxes are levied thereon. Sections 132 and 141 of the Act of 1896 distinctly declare that *municipal* taxes shall be levied upon assessments made in pursuance of the provisions of Article 81 of the Code. * * *

It consequently follows that the valuation of such shares so made by the Tax Commissioner is the *only* valuation upon which *municipal* taxes can be levied. * * This being so it becomes the simple duty of the County Commissioners and the several municipalities to place upon the assessment books the valuations thus made, and to charge each shareholder at that valuation with the number of shares owned by him. *Clark Distilling Co. v. Cumberland,* 95 Md. 471.

Section 141 of the Act of 1896 requires that the *shareholders* shall be asssessed with the shares so valued, though the company is burdened with the duty to pay the tax, which when paid, it is permitted to charge to the account of the shareholder for whom it is paid. *Ibid.* (*Hull v. South. Dev. Co.,* 89 Md. 9; *U. S. Elec P. & L. Co. v. State,* 79 Md. 70; *Am. Coal Co. v. Allegany Co.,* 59 Md. 197.)

A notice by the city to each shareholder is not necessary and would be useless and nugatory if given. If each shareholder were entitled to a notice, and a separate right of appeal, it would be impossible to fix annually a valuation on shares of capital. *Ibid.*

An entry of the names of shareholders and the number of shares owned by each, grouped together under the name of the corporation, is a sufficient compliance with the statute requiring that shares be assessed against shareholders. *Ibid.*

Single Tax Declared to be Unconstitutional Because of its Exemption of Personal Property. The Act of 1892, Chap. 285, exempted from taxation all personal property in Hyattsville, and empowered the Board of Commissioners of that town to make such deductions or exceptions from, and additions to, the assessment made by the assessors as they may deem just, and to correct errors or illegal assessments, and, after such deductions, to levy a tax upon all the property remaining embraced therein, not exceeding twenty-five cents per annum per hundred dollars of the valuation thereof. The assessors valued the land at $369,709 and the buildings at $180,000. Personal property was not assessed at all. After due notice the Board of Commissioners struck from the assessment roll the entire valuation on improvements and levied a tax of twenty-five cents on the hundred dollars of the assessed value of the land. Sundry taxpayers applied to the Circuit Court for a mandamus to restore the valuation of the improvements, the mandamus was denied and an appeal taken. It is not to be assumed

that the Legislature designed to confer upon this Board the broad power to exempt all improvements. * * * The Declaration of Rights, Article 15, provides that every person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government according to his actual worth in real or personal property. The Act of 1892 attempted to disregard Article 15 of the Declaration of Rights, and to substitute an experimental, if not a visionary, scheme, which if suffered to obtain a foothold, will inevitably lead to ruinous consequences. * * The whole cost of conducting the municipal government was attempted to be thrown exclusively on the land. If the Legislature may lawfully do this in this particular instance of Hyattsville, it may do the same thing in the case of a larger and more populous municipality, and in every county. If the assessments on improvements and personal property be stricken from the books in the several counties, and the taxes levied only upon the owners of land, the burden would speedily become insufferable and land would cease to be worth owning. * * * In our opinion the Act of 1892 is null and void, because plainly unconstitutional in its exemption of personal property from assessment and taxation. *Wells v. Hyattsville,* 77 Md. 125.

Situs of Personal Property. The domicile of a testator when living determines the *situs* of his personal property of an intangible nature, not permanently located elsewhere, for the purpose of taxation, and his place of domicile at the time of his death determines the place of administering his estate. *Kinehart v. Howard,* 90 Md. 5.

Shares of stock in Maryland corporations are personal property belonging to the respective shareholders, and such property, when owned by residents of this State can be made liable to taxation only in the counties where the owners reside under Constitution, Art. 3, sec. 51, which declares that personal property of residents in this State shall be subject to taxation in the county or city where the resident resides for the greater part of that year for which the tax may be levied and not elsewhere except goods and chattels permanently located. *Baltimore v. County Commissioners of Allegany County,* 99 Md. 1.

Special Taxes—Legislative Power. It is the settled law of this State that the cost of the improvement of a street may be assessed, in whole or in part, upon the property binding upon the street. In the case of *Hyattsville v. Smith,* 105 Md. 318, the Court said there were two propositions firmly fixed in the law of this State, namely, "that the Legislature has the power of taxing particular districts for local benefits or improvements; and secondly, to authorize a municipal corporations to open, grade, pave, kerb, etc. any street or part of a street or to assess the cost of doing such work on the property binding on such street or part thereof. *Bassett v. Ocean City,* 118 Md. 120.

It has been repeatedly decided that the legislative act of assigning districts for special taxation on the basis of benefits cannot be attacked on the ground of error of judgment regarding the special benefits and defeated by satisfying a court that no special benefits are received. *2 Cooley on*

Taxation p. 1208. Quoted by the Court in *Bassett v. Ocean City,* 118 Md. 120.

The front foot rule of apportionment of the cost of improvements has been recognized and approved by this Court in a number of cases. *Baltimore v. Stewart,* 92 Md. 535. Also see *Baltimore v. Ulman,* 79 Md. 469.

It is conceded, on all sides, to be the province of the Legislature to prescribe how the apportionment shall be made, and this may be either by front foot, by the area of the fronting lots, or by their value, including or excluding the building of them. Occasional hardship may result from the adoption of either mode, but the authorities are united in the conclusion that either may lawfully be made the basis of apportionment. *Baltimore v. Johns Hopkins Hospital,* 56 Md. 1.

State and Municipal Taxes. *Code, Art. 81, sec. 1,* in regard to the levying of county and municipal taxes, does not imply that State and local taxes shall be imposed on the same basis. The arbitrary valuation adopted for convenience of collection, as the basis of State taxation, is not designed to govern the local authorities, by which the tax is imposed and collected in a different manner. *Fireman's Insurance Co. v. Baltimore,* 23 Md. 312.

Code, Art. 81, sec. 1, manifestly contemplates the levying of other assessments besides that provided for by the Act of 1896, Chap. 12. None of the sections of that Article, nor the Act of 1896, confers authority upon a municipality to levy taxes for local purposes, nor do they

provide the means of determining what town property shall be burdened with municipal taxes. The Act of 1896 does not repeal the mode of assessment provided by the charter of Salisbury, nor the exemption from taxation contained therein of judgments and private securities. *Salisbury v. Jackson,* 89 Md. 521.

That the expression, "city and municipal taxation" is not confined to Baltimore City alone may readily be seen by a careful study of the provisions of *Code, Art. 81,* and the amendments thereto. There are many places in them where Baltimore City is named, thus showing that when the Legislature meant it alone, it used the name of Baltimore. *Frederick County v. Frederick City,* 88 Md. 659.

State Tax Commission. A legislative act of 1914 created a State Tax Commission to take the place of the State Tax Commissioner, that office being abolished. The specific duties of the Commission are to equalize assessments throughout the State of Maryland and to provide for the review of all property for purposes of assessment at least once in every five years. The Commission is given very broad powers in the administration of the assessment and tax laws of the State. It has "the final determination of assessments of all property in the counties and cities of the State." It has the power to establish units for the assessment of all kinds of property, to investigate on its own initiative, all assessments in the State, to have access to all assessment and tax books, and to exercise generally all the authority and to perform the duties heretofore incident to

the office of the State Tax Commissioner. In the case of difference of opinion between the Tax Commission and the tax authorities of any county or city "the determination of the Commission shall prevail." Taxpayers may appeal from local taxing bodies to the State Tax Commission upon disputed matters of fact, but on questions of law appeals must be made to the Courts (see *Appendix* for full text of this Act).

State's Only Taxing Restraint. We are now considering the taxing power of the State. The only express prohibition to be found in the Constitution of the United States on this power, is that contained in the tenth section of the first article by which the states are prohibited, unless with the consent of Congress, from laying any imposts or duties on imports or exports; and are also, without such consent, prohibited from imposing any duty on tonnage. This is the only limitation upon the taxing power of the states to be found in the Constitution of the United States, and it has been asserted by very distinguished authority, and we think correctly, that this revenue power, as it originally existed, is subject to no other restraint. *Howell v. State*, 3 Gill, 25.

State's Policy in Assessing Real Estate. It is not compatible with public convenience and the prompt collection of revenue for the State to trace out all the subdivided or qualified interests that may be held in real estate, and seek to hold the various owners responsible. Its policy is to assess the fee simple value of land to the holder of the

possession, where its real owner is not apparent or accessible, leaving the parties interested to adjust the proportions of liability between themselves. *Hill v. Williams,* 104 Md. 604. (Note—In the early history of Baltimore City different estates in land were separately assessed. See Report of Tax Commissioner of 1888, Appendix P. cxxxviii.)

Stock Exchange Seat not Taxable. A seat in the Baltimore Stock Exchange is not liable to valuation and assessment and is not property within the meaning of that term as used by the Bill of Rights. *Baltimore v. Johnston,* 96 Md. 747.

Stock Lists. State and National banks and other incorporated institutions shall, before the first day of March, furnish to the County Commissioners and the Appeal Tax Court, a list of their stockholders, with the residence of each and the number of shares held by each, as of the first day of January preceding; likewise a list of non-resident stockholders whose shares shall be valued in cash and the taxes thereon collected from said corporations and taxes so paid shall be a lien on the shares held by such stockholders. *Code 1911, Art. 81, sec. 159.*

In no case shall the stock of any corporation be valued at less than the full value of the real estate and chattels, real and personal belonging to such corporation whether the shares are quoted on the market or not. *Ibid.*

The Appeal Tax Court may require the stock list to be verified by oath. *Ibid.*

At the time of filing the stock lists corporations must furnish the County Commissioners or the Appeal Tax Court a true statement of the real property owned by them, located in the county or in Baltimore City, which shall be valued and assessed by the County Commissioners or the Appeal Tax Court, giving to the corporations duplicate certificates of said valuations and assessments, to be transmitted by the corporations to the State Tax Commission. *Ibid.*

Stock lists shall not be disclosed other than to a tax or assessment official, or to parties having the right to demand them. Officials violating this provision are subject to a fine of from fifty to five hundred dollars. *Code 1911, Art. 81, sec. 210.*

"Street" Defined. A street shall be construed to mean streets fully graded and paved. Act of 1902, Chap. 130.

Street Railway not a "Railroad" Within the Meaning of the Law. In excepting the stock of railroad companies from assessment under the Act of 1874, Chap. 483, Sec. 145, the Legislature meant railroad companies *worked by steam,* and this exception was made because the State had imposed a tax upon the gross receipts of such companies in lieu of other taxation. It was the duty of the Comptroller to assess the shares of stock of street railway companies, and there can be no question as to the power of the Tax Commis-

sioner to make such assessment. * * * It was the duty of the street railway company to make and deliver to the Appeal Tax Court, an account of the number of shares of stock held by persons non-residents of the State, and to pay the tax assessed on such stock, and charge the same to the account of such non-resident stockholders. *Baltimore v. Baltimore City Passenger Railway Co.*, 57 Md. 35.

Suits Against Executors. "An executor may be sued either in the county where he resides or where he obtains administration." *Code, Art. 75, sec. 88.* Had appellant, therefore, been sued in Baltimore County (where he lived) his liability would still have been to the City of Baltimore (where the administration was opened) for taxes. *Bonaparte v. State,* 63 Md. 473.

Tax Advertisements. The advertisement of a tax sale is addressed to the public and should of itself contain sufficiently definite terms of description to apprise the public of the property to be sold, and any description by the notice which informs the public of the property to be sold is sufficient. It is the identity of the property and not the quality of the estate which the advertisement must describe. *Hill v. Williams,* 104 Md. 605; *Reeside v. Peter,* 33 Md. 120.

"Tax" and "Assessment." The distinction, if any, between a *tax* and an *assessment,* is not very palpable. The meaning of the words is the same in our laws. *Baltimore v. Greenmount Cemetery,* 7 Md. 534.

Tax Books Accessible to All. The tax books being public records, are open and accessible sources of information to all citizens. *Bonaparte v. State,* 63 Md. 470. (The *Code 1911, Art. 81, sec. 25,* provides that County Commissioners and the Appeal Tax Court shall record the valuation of all properties in books "which any person may inspect without fee or reward.")

Tax Cases Decided Under the Act of 1841, Chap. 23—Status of Bank Stock and Bank Property. Under the Act of 1841, Chap. 23 (this is the Act that created the Appeal Tax Court), the Appeal Tax Court of Baltimore valued and assessed the capital stock of the Union Bank of Maryland, and also its real property, including its banking house, furniture and fixtures. This bank held, as proprietor, various houses and lots other than its banking house. The stock of the bank belonged in part to various persons not residents of the State, but residents of other states, and of foreign countries. Other portions of this stock belonged to various citizens of the State, and to certain literary and charitable institutions. From such assessment all the stockholders respectively, and the Union Bank, appealed to this Court. The capital stock of a large number of other corporations, including banks, insurance companies, a railway company and a manufacturing company, was also assessed, all of whom "refused to be taxed by the Appeal Tax Court" and from which refusal the State, in the name of the said Court, appealed to the Court of Appeals. The record also showed that George M. Gill appealed from an assessment of $7,000

of mortgages owned by him, which he claimed was exempt from taxation because he owed a larger sum on mortgage, and that under the Bill of Rights he could only be taxed upon his actual worth, while in fact he was taxed on all his real and personal property, including mortgages to him, without deduction for the sum due by him on mortgage; also Charles F. Mayer appealed from an assessment on debts due to him secured by mortgage of real property, without deduction for the sum due by him on mortgage, from which he appealed. All the corporations and persons mentioned joined in this appeal. * * *

The bank stock in the hands of stockholders was properly taxed, but the Appeal Tax Court had no authority to tax the real and personal property of the banks. Bank property, being represented by the shares of stock, and the shares cannot be taxed at the same time. Non-resident and resident shareholders are taxable alike on the number of shares held by them. *Tax Cases,* 12 G. & J. 83.

The State had full power to grant the exemptions from taxation set forth in the Act of 1841; also the exemptions granted to the Baltimore and Susquehanna Railroad Company by the Act of 1827, Chap. 172, sec. 20; and to the Philadelphia, Wilmington and Baltimore Railroad Company by the Act of 1831 Chap. 296, sec. 19. *Ibid.*

The Act of 1821, Chap. 131, secs. 7 and 11, secures the banks from additional tax for their franchise, but it does not exempt individual shareholders or the property of banks. *Ibid.*

Though the stock of the Philadelphia, Wilmington and Baltimore Railroad Company was exempted from taxation by the Act of 1831, Chap. 296, sec. 19, the State reserved the right to tax the works of the Company. The stock of the Baltimore and Susquehanna Railroad Company is expressly exempted by the Act of 1827, Chap. 72, sec. 20, but the mortgage executed to the State cannot exempt the property mortgaged from taxation in the hands of the Company mortgagor. *Ibid.*

The Farmers' and Merchants' Bank of Baltimore, being the holder of its own capital stock, is not taxable thereon. *Ibid.*

A mortgage in the hands of the mortgagee, though his other property, including that which was mortgaged, is also taxed, is liable to valuation and assessment, and the amount which he owes cannot be deducted therefrom. *Ibid.*

Literary and charitable institutions, exempted under the Act of 1841, are not taxable. *Ibid.* (Note.—For later rulings on questions involved in this case see *Wilkens v. Baltimore,* 103 Md. 293; *Consolidated Gas Co. v. Baltimore,* 101 Md. 541; *Crown Cork and Seal Co. v. State,* 87 Md. 687; *Baltimore v. Canton Company,* 63 Md. 218.

Tax Laws to be Construed Liberally. While there is a great deal of loose and inexact phraseology employed in many of the tax laws, it is not to be construed critically with a view to defeat the enactments, but it must be interpreted liberally so as to uphold them. *Monticello Company v. Baltimore,* 90 Md. 424.

Tax Limitation. The collection of taxes shall not be enforced by law after the lapse of four years from the levying of same. *Hebb v. Moore,* 66 Md. 167; *Baldwin v. State,* 89 Md. 587. *Baltimore City Charter,* sec. 843.

Tax Sales—Duties and Responsibilities of Collectors. While the final ratification of a tax collector's sale by the Circuit Court is *prima facie* evidence of the regularity of the proceedings, it has no greater or other efficacy. It merely relieves the purchaser of the *onus* of proof, and casts upon the person attacking the sale the burden of showing any irregularity; but the validity of the sale still depends upon there having been a substantial compliance with all the essential requirements of the statute. *Richardson v. Simpson,* 82 Md. 159; *Baumgardner v. Fowler,* 82 Md. 631.

If the Collector should sell more land than is reasonably sufficient to pay the taxes and charges thereon, where a division is practicable, the sale will be set aside. *Margraff v. Cunningham,* 57 Md. 587.

A Collector, under the *Code, Art. 81, sec. 51,* may levy upon and sell real estate to satisfy such taxes, whether there be personal property on the premises or not. *Dyer v. Boswell,* 39 Md. 465.

The sale of a farm of the value of twelve or fifteen hundred dollars to satisfy a tax bill of one dollar and twenty-five cents should be declared null and void. *Dyer v. Boswell,* 39 Md. 465.

Where the legality of a sale is disputed, a buyer of land at a collector's sale must show that all the requirements of the law have been complied with. *Ibid.*

A collector has no authority to sell for taxes until he has made a levy; without the levy the sale is null. *Duvall v. Perkins,* 77 Md. 587.

Compliance with all the requirements of the statute is essential to the validity of a tax sale. Where it is shown that the person upon whom the notice was alleged to have been served was dead at the time the proceedings were fatally defective. *Benzinger v. Geis,* 87 Md. 708.

The collector who sells the property must make the deed, unless the Court orders his successor to make it. Otherwise the sale is void. *Taylor v. Forrest,* 95 Md. 529. (The Act of 1904, Chap. 261, validates the deed of the successor of the collector who made the sale, and does not violate any of the vested rights of the owner of the property. *McMahon v. Crean,* 109 Md. 669.)

Tax Titles. A complete title passes to the purchaser of property at a tax sale, all previous liens and incumbrances being extinguished. *McMahon v. Crean,* 109 Md. 652.

Deeds for property sold at a tax sale should be signed either by the Collector who made the sale or his successor in office. Act of 1904, Chap. 281.

The validity of a tax sale depends upon there having been in the antecedent proceedings a proper compliance with

the requirements of the law. The order of a Circuit Court ratifying a sale is only *prima facie* evidence of its regularity. *Richardson v. Simpson,* 82 Md. 155.

Taxation of Property Owned by Non-Residents—Liability of Custodians of Distilled Spirits. Sections 214 to 224 of Article 81 of the Code of General Public Laws require that the custodian of distilled spirits shall pay for the owner the taxes levied with reference to the property but reserve a lien upon it as a means of reimbursement for the payment. This legislation is claimed to be in violation of Article 15 of the Declaration of Rights. The proposition is that inasmuch as Article 15, as construed by this Court, permits taxes to be levied *in personam* but not *in rem,* and as the provisions in question have accordingly been held to contemplate that taxation *of the owner* of the assessed commodity, therefore the requirement compelling the mere custodian to pay such taxes, though allowing him a lien for his protection, is not a valid exercise of the power of taxation thus restricted and amounts to the taking of property without due process of law. The validity of the statute in controversy was sustained in *Monticello Distilling Co. v. Baltimore,* 90 Md. 416; *Fowble v. Kemp,* 92 Md. 637; *Carstairs v. Cochran,* 95 Md. 488; *Hannis Distilling Co. v. Baltimore,* 216 U. S. 285. In the last case cited the identical reason now submitted for a reconsideration of the question was presented and ruled insufficient. It was then held that as the statute had been declared by this Court to be a valid exercise of taxing power, and had been found in *Carstairs*

v. Cochran, 193 U. S. 10, not to be in conflict with the Federal question, there was nothing in the case upon which to base a Federal question, and the appeal was dismissed. It would be difficult to conceive of a more effectual conclusion of an issue. In the pleas it is alleged that the owners of the distilled spirits are non-residents of Maryland, and consequently not liable to taxation by this State. If foreign corporations were exempt from the duty imposed generally upon custodians of distilled spirits to pay the taxes owing by the owner, the whole system of taxation with reference to that class of property, would be deranged, and a large proportion of the revenue to which this State is entitled from that source would be rendered uncollectible. *Hannis Distilling Co. v. Baltimore,* 114 Md. 678.

Taxes Due by a Trust Estate not Barred by the Statute of Limitation. By request of parties interested, a trust estate, which had been created by will, was brought into an equity court and its supervision assumed by the Court. On March 13th, 1876, the trustees sold certain real property belonging to the estate. The deed was made to the purchaser September 28th, 1877, the sale having been ratified on May 4th, 1876. The property was to be conveyed free of all taxes. In September, 1875, the City of Baltimore had assessed the property for the grading, paving and kerbing of an adjacent street. A bill for this assessment was delivered to one of the trustees in November, 1875, demanding payment, and a thirty day notice was given in April, 1876. But the taxes were withheld because a question of the

legality of the assessment had been raised. The purchaser, being anxious to get possession of the property, proposed to pay the purchase price, and to deposit with a banker a check for the amount of taxes. This was agreed to, the purchase price paid and the check deposited. The city was not a party to this transaction, and made no effort to enforce its claim until after four years had expired, when it brought suit, asking that the amount of the assessment be paid out of the check. The trustees plead the Statute of Limitations. * * * *

The proof clearly shows that due notice was given to the trustees of the charge on the property, and that due demand was made, for payment of the assessment, within the time prescribed by law. And such being the case, it became the duty of the trustees, as well by the terms of the sale as by the express terms of the Statute, to pay all assessments and taxes binding on the property. With this knowledge and duty on their part, the trustees received and held the amount of money in question, applicable to the payment of the assessment due, *in trust* for the city. Having so received the money and set it apart for the express purpose, the trustees cannot now be allowed to avoid their duty, and take advantage of their own delay, by setting up the defense taken in this case. *Gould v. Baltimore,* 58 Md. 52.

Taxes Due by Trustees not Barred by Limitation. In the distribution of a trust estate all the taxes due must be paid under sec. 63 of Art. 81 of the Code, which provides that "all sums due and arrears for taxes from the party

whose property is sold (at trustee's sale) shall be first paid and satisfied." There is no exception. The only thing to be known is that they are in arrear and unpaid. The four-year Statute of Limitation provided for in the Act of 1874, Chap. 483, sec. 82, does not apply to a trust estate. *Hebb v. Moore,* 66 Md. 167.

Taxes in Arrears. Though under *Code, Art. 81, sec. 72,* taxes are not due and in arrears until the first day of January succeeding their levy, they may be paid at any time after they have been levied. *Condon v. Maynard,* 71 Md. 604.

The taxes must necessarily be due before payment can be enforced. *Ibid.*

Taxes are not in arrears until the first day of January next succeeding the date of their levy, and this suit, having been brought in August, 1905, for taxes levied January 1st, 1905, cannot be maintained. *Baltimore v. Chester River S. Co.,* 103 Md. 411.

Under the order of an equity court certain real estate having been sold in September, 1877, the State and county taxes for that year are not allowed because they were not due and in arrears until January, 1878. *Wheeler v. Addison,* 54 Md. 41.

The taxes included in said levy (November) on real estate or chattels real, and on all forms of personal property, including shares of stock and other property, valued and

subject to valuation by the State Tax Commissioner, shall be in arrears on the first day of July next ensuing the date of their levy, and the taxes on all forms of property after they become in arrears shall bear interest at the rate of six per centum per annum. Act of 1914, amending secs. 167 and 171 of the *Baltimore City Charter.*

Taxes Paid in Error or Misapprehension of the Law Not Refundable When no Injustice is Involved. This is an application by the appellant against the appellees, to require the latter to levy the sum of $40,100.41, to the use of the former, for taxes alleged to have been erroneously levied and paid. The supposed right to relief is founded upon the *Code, Art. 28, sec. 7,* which provides that the County Commissioners shall, "when satisfied that any error has arisen by assessing property not liable to be assessed, rectify such error and levy and pay to the proper person any money that may have been paid in consequence of such error." By the local law of Allegany County, it was provided that the "incorporated institutions and companies of Allegany County, whether they have or have not declared any dividend or earned any profits, shall pay the State and County taxes levied upon the assessed value of their capital stock, held by stockholders, residents or non-residents of said county; but the holders of said stock shall not be liable to taxation upon the stock held by them." Under this provision of the local statute, and without supposing that the same had been repealed by either the general assessment Act of 1866, or that of 1876, the capital stock of the appellant was assessed by the

assessors, appointed under the general assessment Act, in pursuance of the local law, instead of the general assessment law; and the appellant paid the taxes on such capital stock so assessed, from 1867 to 1878, inclusive. But in 1880 this Court decided that the provisions of the local law had been repealed by the provisions of the general assessment Act of 1866. By the Act of 1866 and the Act of 1876, the shares of the capital stock of all corporations, liable to taxation, were directed to be assessed to the resident holders of such stock in the city or county where the holders resided. * * *

It is a well settled principle, that if a party through some mistake, misapprehension, or foregetfulness, of facts, receives money to which he is not justly and legally entitled, and which he ought not to retain, the law regards him as the receiver and holder of the money for the use of the lawful owner of it, and raises an implied promise on his part to pay over the amount to such owner; and if the money be withheld from the owner, an action for money had and received may be maintained. *Kelley v. Solari,* 9 M. & W. 54; *R. R. Co. v. Faunce,* 6 Gill, 69, 77. * * * * *

But, conceding that action for money had and received to lie for taxes paid under a mistake of fact it is insisted that no such action could be maintained for the recovery of the money claimed in this case, because here the taxes were paid under a mistake of law. And it is certainly true, as a general principle, according to the decisions of this Court, that where taxes have been paid under a mistake of law,

they cannot be recovered back in an action at law. *Baltimore v. Lefferman,* 4 Gill, 431; *Lester v. Baltimore,* 29 Md. 415. * * * * *

When County Commissioners are satisfied that a mistake has been made in assessing property which is not assessable it is their duty to refund the taxes thus erroneously received and under the *Code, Art. 28, sec. 7,* it would make no difference as to whether the taxes were paid under a mistake of law or a mistake of fact. * * * * *

As we have already stated, the stock of the appellant was not assessed and made liable to taxation in any other part of the State for county or city purposes, from 1866 to 1879. The stockholders of the appellant were equally liable to assessment as the stockholders of any of the other corporations in other parts of the State; and, therefore, under the circumstances of the case, there is no very persuasive equity in favor of the application. It is simply the case of a party paying taxes on its property to the authorities of one locality, by mutual mistake or misapprehension of the law, when that property could, and should, have been assessed and made liable to taxation in different localities of the State, but from which it escaped by reason of such mutual mistake of the parties concerned. *George's Creek Coal & Iron Co. v. Allegany County,* 59 Md. 260.

Taxes Voluntarily Paid Cannot be Recovered. This is an action of assumpsit brought by the appellee to recover the amount of taxes erroneously paid the appellant by her for

the years 1907 and 1908. Plaintiff was the owner of property in the Annex to Baltimore City against which she had received a tax bill at the full city rate for the above two years, which she paid. Subsequently the Circuit Court decided, in another case, that property located in the same block as that of the appellee was only taxable for those two years at the sixty cent rate. The Appeal Tax Court refused to refund the amount overpaid and the appellee herein brought suit for recovery. There was a verdict in her favor and the City of Baltimore appealed. It is admitted by the appellee that it is a recognized general rule of law that taxes voluntarily paid under a mistake of law cannot be recovered back, but it is contended that there are certain exceptions. One of the exceptions relied upon is thus stated in brief: "Where there was no legal or moral obligation to pay and the recipient has no right in good conscience to restrain." Conceding that such an exception may exist in some cases, it has never been applied in this State to suits brought to recover taxes paid under a mistake of law. Another exception is "Where the law is doubtful," as was held by this Court in *Lester v. Baltimore,* 29 Md. 415. * * *

It is claimed for the appellee that, "Ordinance No. 88, approved June 27th, 1973, codified under Art. 38, sec. 5, City Code 1906, does give her the right to recover the excess which she paid. Without some express authority given by the statute we are not prepared to say that a municipality can by ordinance change the common law of the State to such an extent as is claimed here. * * The probabilities are that the ordinance was intended to authorize the Appeal

Tax Court to correct errors and refund money paid under a mistake of fact, but, however that may be, we are of the opinion that it does not authorize an action under such facts and circumstances as exist in this case. * *

Inasmuch as owners of property in the Annex have full opportunity to have such questions determined in advance they ought not be encouraged to adopt the course the appellee has pursued, and then, if some other person succeeds in having the increase declared illegal, subject the city to a suit to recover the money back, even if that could be done, which we are of the opinion could not be done, under existing laws. It would necessarily cause much confusion if it was authorized and might work a great hardship on other taxpayers to have a large number of owners of property pay their taxes year after year and then finally sue the city. * * When a party pays the tax without resorting to his remedy under the Statute or in equity he cannot recover it back as a general rule, and this case furnishes no exception to that rule. *Baltimore v. Harvey,* 118 Md. 275.

It is now established by an unbroken series of adjudications in the English and American Courts that where money is voluntarily and fairly paid, with a full knowledge of the facts and circumstances, it cannot be recovered back in a Court of law, upon the ground that the payment was made under a misapprehension of the legal rights and obligations of the party. *Baltimore v. Lefferman,* 4 Gill, 425; also *Morris v. Baltimore,* 5 Gill, 244.

There are many doubtful questions of law. When they arise, the party of whom the claim is made, has an option either to litigate the question or submit to the demand and pay the money. But it would be both mischievous and unjust if he, who has acquiesced in the right by voluntary payment, should be at liberty at any time within the Statute of Limitations to rip up the matter and recover back the money. The plaintiff in this case (an action of assumpsit to recover back money paid for a tax assessed his lot which, in *Baltimore v. Porter,* 18 Md. 284, had been held to be illegal) having failed to avail himself of a legal remedy for his protection must abide by his election. *Lester v. Baltimore,* 29 Md. 415.

It is certainly true, as a general principle, according to the decisions of this Court, that where taxes have been paid under a mistake of law, they cannot be recovered back in an action at law. *G. C. Coal & Iron Co. v. Allegany County,* 59 Md. 255.

Taxing Power of Counties. Counties have "no inherent power of taxation." What power they exercise must be delegated to them by the Legislature, subject to every constitutional limitation to which the taxing power of he Legislature is subject. *Baltimore & E. S. R. R. Co. v. Spring,* 80 Md. 517; *St. Mary's Ind. School v. Brown,* 45 Md. 333.

The Act of 1888 Annexing Certain Territory to Baltimore City Not a Contract. By an Act passed at the January session of the Legislature of 1888, provision was made

for annexing to the City of Baltimore part of the territory then within the limits of Baltimore County. By sec. 19 of the Act of 1888, it is enacted that until after the year 1900 the property situated in the annexed districts should remain assessed at the valuation fixed by the Baltimore County authorities and that the owners of that property should only be charged at the rate of sixty cents on the $100. The same section further provides that from and after the year 1900 "the property, real and personal, in the said territory so annexed, shall be liable to taxation and assessment therefor, in the same manner and form as similar property within the present limits of the said city may be liable; provided, however, that after the year 1900, the present county rate of taxation shall not be increased for city purposes on any landed property within the said territory, until avenues, streets or alleys shall have been opened and constructed through the same, nor until there shall be upon every block of ground so to be formed, at least six dwellings or store houses ready for occupation. * * * * *

The validity of this statute was assailed on various grounds but in *Daly v. Morgan,* 69 Md. 460, it was fully and finally upheld. At the legislative session of 1902, an Act was passed that defined the terms used in the original Act of 1888 and this is the statute which is now attacked as uncontsitutional and void. By this last mentioned Act landed property was defined to mean "real estate," whether in fee simple or leasehold, and whether improved or unimproved; "until avenues, streets, or alleys shall have been opened and constructed," shall be construed to mean until avenues,

streets or alleys, shall have been opened graded, kerbed or otherwise improved from kerb to kerb by a pavement, macadam, gravel or other substantial material; the words "avenues," "streets," and "alleys," being herein used interchangeably; "block of ground," shall be construed to mean an area of ground not exceeding two hundred thousand superficial square feet formed and bounded on all sides by intersecting avenues, streets, or alleys, opened, graded, kerbed and otherwise improved from kerb to kerb by pavement, macadam, gravel or other substantial material as above." * * * * *

The Mayor and City Council of Baltimore treating the Act of 1902 as invalid, proceeded to levy against the appellant and others living in the belt and similarly situated, the current city rate, whereupon the pending bill was filed to restrain the levy and collection of that tax. The sole ground upon which its validity is questioned is that it impairs the obligation of the contract supposed to be involved in the Act of 1888. We have no difficulty in holding that the Act of 1888 neither evidences or contains the constituents of a contract. The purpose of the Act was to enlarge the municipal limits of the City of Baltimore. The provision regulating the rate of taxation was merely the exercising by the General Assembly of its undoubted authority over the subject of taxation. It conferred upon the City of Baltimore the power to tax individuals who prior to its passage had not been within its taxing jurisdiction, but the granting of that power to the municipality was not the grant of private property, nor the creation of a vested right, much less was it a contract. The authority given to the city to tax

the inhabitants in the belt was a governmental power that was conferred, and like every other similar power conferred upon a municipality, was subject to the control of the General Assembly. The Maryland cases fully sustain this proposition. *State v. B. & O R. R. Co.* 12 G. & J. 437. The fact that the majority of the voters in two of the districts voted in favor of annexation does not convert the Act of 1888 into a contract. * * * *

A court of equity has undoubted jurisdiction to restrain the levy and collection of a tax attempted to be levied illegally. Remedy there must be in some form, for so serious a wrong could not be permitted to go unredressed. It is insisted that the appellant could, by a timely appeal to the Baltimore City Court, have obtained complete relief and therefore that equity was without jurisdiction to aid him. We cannot accept that view. We concur in the conclusion reached by the Judge below that the Act of 1888 does not constitute a contract, but we differ from the view he took to the effect that equity was powerless to intervene in such a case as this record presents. *Joesting v. Baltimore,* 97 Md. 594.

The Thirty Cents Local and Fifteen Cents State Tax on Securities. Bonds and other evidences of debt issued by any corporation incorporated in or out of the State, or by any state except Maryland, and shares in any bank other than a National bank, owned by residents of this State shall be assessed for municipal and county purposes at their market value, at the rate of thirty cents on the one hundred

dollars. Those upon which no dividend shall be paid shall not be valued at all. *Code 1911, Art. 81, sec. 214.* For State purposes dividend paying shares shall be assessed at fifteen cents on the hundred dollars. Act of 1914, Chap. 411. See Appendix for full text of Act.

The *Code, Art. 81, sec. 214,* leaves no doubt as to the county or municipal purposes on these securities. Nor can there be any question as to the amount of tax that can be levied in addition to the State tax, as the law says there shall be paid on such valuation thirty cents (and no more) on each one hundred dollars for county and municipal taxation. There is an express prohibition against exacting a greater amount than thirty cents. Courts have nothing to do with the wisdom of such provisions as long as they do not conflict with the law. *Frederick County v. Frederick City,* 88 Md. 656.

(For other Maryland decisions involving the thirty-cent security tax Act, see *Baltimore v. Johnson,* 96 Md. 745; *Consolidated Gas Company v. Baltimore,* 101 Md. 556; *Bank of Baltimore, v. Baltimore,* 92 Fed. 239, affirmed in 100 Fed. 24; *Consolidated Gas Company v. Baltimore,* 105 Md. 50; *Baltimore v. State,* 105 Md. 1, 11; *Schley v. Montgomery County,* 106 Md. 410; *Musgrove v. B. & O. R. R. Co.,* 111 Md. 629. In none of these was the constitutionality of the Act questioned.)

The Poll Tax Declared to be "Grievous and Burdensome" in the Declaration of Rights—History Thereof.

Is compulsory labor imposed upon persons residing in the several election districts of a county for the purpose of keeping the roads in repair, with the privilege of providing a substitute, or the payment of a stipulated sum in lieu of such personal service, a *"levying of taxes by the poll,"* within the meaning of the Constitution? Such compulsory labor is beyond question a burden on the persons upon whom it is imposed; and though it assumes the form of labor, it may be fairly considered, in the nature of a tax. At the same time, when this article in the Bill of Rights is construed in the light of the legislation in regard to levying taxes by the poll in force when the Constitution of 1776 was adopted; and in the light of the legislation in regard to compulsory labor on the public roads, also in force at that time, and which has continued in force down to the present, it is clear that compulsory labor for the purpose of keeping the roads in repair has never been considered as a poll tax, prohibited by the Constitution. A brief reference to the legislation in force when the Constitution of 1776 was adopted will clearly show the nature and character of poll taxes, the levying of which was declared to be grievous and oppressive, and ought to be *abolished*. If we turn to the Act of 1715, Chap. 15, we find that all persons, male and females, free and slave, above the age of sixteen years are declared to be *"taxables,"* and upon each person thus declared to be a taxable, the commissioners of the several county courts were directed to levy a specific sum, to be paid in money or tobacco, for the support of the Government. And this Act, providing for the levying of taxes by the poll, continued in force down to the

Revolution. Strange as it may seem nowadays, the poll taxes, to which we have referred, were the only *direct taxes* levied for public purposes during the colonial period. Such taxes thus levied, without reference to the ability or the means of the "taxable" to pay them, must necessarily have been, in many cases, burdensome and oppressive, and it was such levying of taxes by the poll that the Constitution of 1776 denounced as being *"grievous and oppressive,"* and which ought to be *"abolished."* *Short v. State,* 80 Md. 398.

Time at Which Corporate Real Estate May be Assessed—Degree of Completion of Building Required by Law. This is an appeal from an order of the Baltimore City Court dismissing a petition filed by the appellant which sought to have the assessment of its dry dock ($200,000) stricken from the tax books. The assessment was made on the 6th of January by the Appeal Tax Court after a hearing on December 23d. Appellants contended that the assessment was illegal because it was made after the first day of October (City Charter, sec. 171). The first day of October is the day on which the tax books are expected to be ready for the ensuing year. But Section 171 also provides that property which has "escaped" or been "omitted" shall be valued and assessed after the first of October "whenever the same may be discovered." It is desirable and important that as far as possible the assessable basis be known and determined by the day contemplated by the charter. But if there be property which is taxable, but is not on the assessment books on that day, it ought not to escape taxation merely because

it had not been reported by the owner, or had been overlooked by the tax officers. Assuming that this dock was in a condition that made it taxable on October 1st, we think it is clear that the Appeal Tax Court was right in assessing it. *Skinner Dry Dock Co. v. Baltimore,* 96 Md. 39.

The dock was practically completed on October 1st with the exception of the gate and some dredging which was necessary to be done before using it. If it was not assessable at that time by reason of what was yet to be done, then it would be a great temptation for property owners to postpone making some small part of the improvement until after October 1st. These taxes were for 1902, and for some weeks before the beginning of that year the dock was in actual use. Indeed, with the exception of the gate, the dock proper was apparently complete before the 1st of October. In our opinion the dock was substantially completed or so nearly so as to make it a subject for taxation on October 1st. *Ibid.*

In addition to this view, corporations are required, under *Code, Art. 81, sec. 141,* to furnish to the County Commissioners or Appeal Tax Court, before the first day of March, a true statement of their real property, as of January 1st "and such real property shall be valued and assessed by said County Commissioners and Appeal Tax Court respectively to the" Company, the State Tax Commissioner then assessing the shares of stock as provided for by law. Such being the law applicable to corporations, how could the appellant escape taxation on this dry dock for 1902, even if it is conceded that it was not in a condition on October 1st to

be taxed? It could then have been valued and assessed by the Appeal Tax Court, if not previously assessed, for if that were not so a corporation could readily avoid the payment of taxes which it justly owed. Under *Code, Art. 81, sec. 141,* improvements completed before January 1st on the real estate of corporations in Baltimore City are taxable for the ensuing year, though not assessed to the corporation on October 1st of the preceding year. *Ibid.*

Time of Assessment of the Shares of Domestic Corporations as of January 1st. Section 150, of Article 81, of the Code, requires every state corporation to report to the State Tax Commissioner by the 15th of March in each year a correct statement of the number of shares of capital stock in such corporation, and the par value of each share with such information in regard to the value of the same as may be in possession of the officers of the corporation as of the 1st day of January, and the Commissioner shall by the 15th of May assess the shares as of the 1st of January preceeding and levy the State tax thereon. The State Tax Commissioner shall before the 1st of March furnish to the County Commissioners and the Appeal Tax Court of Baltimore City a list of the stockholders residing in their respective districts and the number of shares owned by each. It is also provided that the State Tax Commissioner shall certify his valuations to the tax officials of the various counties and cities in the State. The provisions of Article 81 leave no doubt that the shares of stock in all Maryland corporations are assessable to the persons who owned the

shares on January 1st, and that the information which said Article requires from the officers of corporations must relate to the ownership of each share as of January 1st. In this case a number of shares that were owned by non-residents on January 1, 1905, were transferred to a corporation in Queen Anne's County; these shares were properly assessed and were payable in Baltimore City for that year. *Baltimore v. Chester River Steamboat Company,* 103 Md. 408.

True Test of Taxable Value. The difference between a security that produces interest and one that does not, and the reason for the taxation of the one and the exemption of the other, are both clear and obvious. The true test of a taxable value is the producing value to the owner. *Simpson v. Hopkins,* 82 Md. 490.

Trust Estates Must be Assessed at Residence of Beneficial Owner. The Safe Deposit & Trust Company had in its posession securities to the value of $28,890 in trust for Noah Walker, a resident of Baltimore County, and $22,930 in trust for Emily R. Hoff, also a resident of Baltimore County, against both of which assessments were levied by the Appeal Tax Court of Baltimore. The appellee protested upon the ground that under the Act of 1902, Chap. 486, it was taxable in Baltimore County. An appeal was taken to the City Court and the assessment was abated, whereupon the Appeal Tax Court appealed. The appellant contended that the Act of 1890 conflicted with Article 15 of the Bill

of Rights. Held that the Legislature did not exceed its power over the subject of taxation or violate any of the provisions of the Bill of Rights or Constitution in providing that personal property of the kind involved in this case, shall for purposes of assessment and taxation, be treated as belonging to the substantial owners and not to its technical holder. *Baltimore v. Safe Deposit & Trust Company,* 97 Md. 664.

When the personal property held in trust consists of shares of stock in corporations of this State the Act of 1902, Chap. 406, being in *pari materia* with the existing law requiring the corporation to pay the taxes on its stock for the stockholder, the two laws should be construed together, and the residence of the *cestui que trust* be treated as the *situs* for taxation, and the taxes be paid by the corporation in accordance with the system in force for the payment of such taxes. *Ibid.*

Trustee for Creditors. A trustee for creditors is required to pay by way of preference only the taxes due on the property of the debtor taken possession of or sold by him, and not all taxes due by the debtor, or taxes on property which he does not accept for the estate. *Parlett v. Dugan,* 85 Md. 407.

Turnpikes as Boundaries. A turnpike may be used as a boundary in the reclassification of property in the Annex for taxation purposes. *Coulston v. Baltimore,* 109 Md. 271.

Turnpikes as Public Streets. Turnpikes upon which property in the Annex fronts, on which no tolls are paid in

passing from such property to the old city limits, are to be considered as public streets. *Baltimore v. Knell,* 111 Md. 583.

Trustees Living in Different Counties. In this case property was held by two trustees, one living in Baltimore City and one in Baltimore County. This Court, in *Latrobe v. Baltimore,* 19 Md. 13, settled the doctrine that the residence of the trustee is the *situs* for taxation upon property. The tax laws of the State do not expressly provide for such a case as this, and our decision must be made to rest upon what we regard to be equity and right. The property is certainly not liable to a double tax. We think it should be taxed, one-half as of the place of residence of each trustee, that is one-half should be taxed to the trustee in Baltimore City and one-half to the trustee in Baltimore County. *Baltimore v. Stirling,* 29 Md. 49.

Unissued Shares of Stock not Liable to Assessment. The Consumers' Ice Company was assessed by the State Tax Commissioner on its capital stock of 4,000 shares, though the Company informed him that only 3,277 shares had been issued. * * When the statute directs the Tax Commissioner to "assess for state purposes the shares of capital stock in all incorporated institutions or companies" it evidently means shares of stock that are in existence. If they have no existence they have no value. Those that are already issued may possibly have some additional value given them by reason of the fact that others can be issued,

but that can be taken into consideration when the former are assessed. The State can lose nothing by this construction. The State Tax Commissioner had no authority to assess the 723 shares of this company which had not been issued. *Consumers' Ice Co. v. State,* 82 Md. 132.

Vessel Assessments. All interests, shares or proportions owned by residents of this State in all ships or other vessels whether such ships or other vessels be in or out of port are and shall be valued and assessed for the purpose of State, county and municipal taxation to the respective owners thereof, in the county or city in the State in which said owners may, respectively, reside, and such respective owners shall pay the taxes thereon. *Code 1911, Art. 81, sec. 2.*

The interest of a citizen of Maryland and resident of Baltimore in a vessel engaged in foreign commerce registered, as a vessel of the United States, Baltimore being the home port of the vessel and the domicile of its directing and managing owners, is taxable by the municipality. Such tax is not in conflict with the Federal Constitution. *Gunther v. Baltimore,* 55 Md. 458; *Howell v. State,* 3 Gill, 16; *Hooper v. Baltimore,* 12 Md. 471.

A vessel has no *situs* apart from the domicile of the owner. *Hooper v. Baltimore,* 12 Md. 464.

The *situs* of "floating property," like rolling stock, etc., is at the residence of the owners. *Hopkins v. Baker,* 78 Md. 371.

Vessels enrolled in New York and engaged in inter-commerce, but permanently in Virginia, are taxable in Virginia. *Old Dominion S. S. Co. v. Virginia,* 198 U. S. 299.

The registration district of which Baltimore is the port of entry is not, under the laws of Congress, limited to Baltimore City, and the mere fact that the vessel is registered in the Baltimore custom house does not give the city the right to tax her. *Hooper v. Baltimore,* 2 Md. 472.

The Act of 1841, Chap. 23, taxing all ships and other vessels "whether in or out of port" was a valid and constitutional exercise of power by the State. *Howell v. State,* 3 Gill, 10.

4141, Revised Statutes, U. S., 1792, prescribes the duty of registry "by the collector of that collection district which includes the port to which such vessel shall belong at the time of her registry."

Vessels are taxable at the place of registry. See *Morgan v. Parham* 16 Wall, 472.

When the owner (of a vessel) is domiciled without the State and the property is in the possession, or in the custody and control of an agent or other person within the State it becomes taxable at the domicile of the person having possession thereof. *Welty on Assessment,* sec. 43.

The taxable *situs* of ships at sea is at the residence of the owner. *Thompson on Corporations,* sec. 8096.

United Railways Park Tax a Substitute for Taxation on Easement in Public Streets. The principal question presented by this appeal is whether the street easements used and occupied by the appellant in the City of Baltimore are subject to valuation and assessment by the Appeal tax Court of that city, for the purposes of taxation, under the existing laws of this State. * * The appellant contends that the tax of nine per cent. on its gross receipts imposed by the Act of 1892, Chap. 279, is in lieu of and substitution for any other tax on its intangible property, whether it be termed franchise or easement. * * * *

What appellant claims is not exemption but exoneration. It does not contend that the State has surrendered its right to further tax the easements in question, but having taxed them in the manner prescribed in the Act of 1882, further legislative action is necessary before an additional burden of taxation can be lawfully imposed upon them. * * When we reflect that such tax reaches every nook and corner of value in the easements as well as in the franchises of the corporation; that the amount of the tax is equivalent to a direct property tax on an assessment of over $20,000,000; that there could have scarcely been a thought in the legislative mind at that time (1882) of taking the easement separately as property distinguished from the franchise, and that in fact no effort was made to tax easements for a period of twenty-five years thereafter, we think the inference is irresistible that the Legislature did not then contemplate a tax on the easements enjoyed by the street car companies now

composing the appellant, in addition to the gross receipts tax which by that Act it imposed upon them. * * * *

We hold, therefore, that as to the easements enjoyed by the appellant upon which the park tax is earned and paid, no further assessment thereon for the purpose of taxation can be lawfully made without express legislative authority, and that consequently the assessment of them by the Appeal Tax Court is illegal and void. As to the fourteen miles of easements of appellant in the City of Baltimore located on turnpikes and private ways, and upon which no gross receipts tax is paid, we think these are subject to taxation by the Appeal Tax Court. *United Railways Co. v. Baltimore,* 111 Md. 264.

Validity of a Verbal Order of County Commissioners to the Collector to Pay a Sum of Money. The Commissioners of Charles County passed a verbal order instructing the Collector to pay a sum of money to a claimant, and though the clerk to the Commissioners failed to make an entry of the order, he directed the Collector to pay the money; the failure to make a proper entry on the records did not invalidate the order. When the Collector, under such circumstances, failed to pay the money as directed, but misappropriated it, the sureties on his bond are liable for the amount. *Fidelity and Deposit Co. v. Co. Com'rs. Charles County,* 98 Md. 162.

Valuation of Shares by Tax Commissioner Final. The decision of the Board of Appeal in reviewing the

valuation of the shares of stock by the State Tax Commissioner is final as to the question of valuation. Even if there was error in the valuation the Courts cannot interfere unless it is shown that the property assessed is exempt under the statute. *Salisbury Building Asso. v. Wicomico County,* 86 Md. 615.

Ward's Property in Possession of Foreign Guardian. Personal property belonging to a ward, which is in possession of a guardian residing in the District of Columbia, though her husband may have a residence in this State, is not taxable in this State. *Kinehart v. Howard,* 90 Md. 1.

Western Maryland R. R. Rolling Stock Assessable in Baltimore. As to the assessment of the rolling stock of the Western Maryland Railroad, such as engines, cars, etc., and also the tracks within the eighth ward of Baltimore City, we think there was no error in the assessment with respect to the locality of this property. It is contended by the Company that it is entitled to exemption from assessment, in the City of Baltimore, in respect to at least a part of its rolling stock; that such rolling stock should be treated as part of the road, and its value distributed, *pro rata* in the assessments, along its entire line. But in this we do not agree. It is conceded that the principal business office and also the principal station of the Company are located in the eighth ward of the city, and that must be taken as the place of the domicile of the Company for purposes of taxation. Whether we regard such rolling stock as belonging to one species of prop-

erty or the other (real or personal), the entire road being within the limits of the State, the only practical place for assessment, in the absence of some positive rule of distribution and apportionment prescribed by the Legislature, is the place of the domicile of the Company. *Burroughs on Taxation,* 186, and the cases there cited. *Appeal Tax Court v. W. M. R. R. Co.,* 50 Md. 274.

The Western Maryland R. R. Co. is held to be the substantial owner of the leasehold interest in real estate, which it possesses and uses under an ordinance of Baltimore City providing for a formal lease of such property for ninety-nine years, said lease not having been executed, though the city was willing to execute it, and assessable for the value of the leasehold. *Ibid.*

APPENDIX

THE STATE TAX COMMISSION

AN ACT TO EQUALIZE ASSESSMENTS THROUGHOUT MARYLAND.

ACT OF 1914, CHAPTER 841.

AN ACT to create a State Tax Commission to provide for the equalization of assessments throughout the State of Maryland, and to provide for the review of all property for purposes of assessment at least once in every five years; to define the duties and other powers of the State Tax Commission; to provide for procedure and appeals in cases affecting taxation; to provide for the appointment of a supervisor of assessments in each County and the City of Baltimore; to provide for the payment of the salary of the supervisor of each County and Baltimore City; and to provide for the abolishing of the office of State Tax Commissioner, and to substitute the State Tax Commission for the State Tax Commissioner, and to appropriate a sum of money annually to pay the salaries and expenses of the State Tax Commission by adding twelve Sections to Article 81, title "Taxation," of the Code of Public General Laws, as set out in the Code of 1912.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That Article 81, title "Taxation," of the Code of Public General Laws as set out in the Code of 1912, be and the same is hereby amended by adding twelve Sections to immediately follow Section 232, and to be known as Sections

233, 234, 235 236, 237, 238, 239, 240, 241, 242, 243 and 244, and to be as follows:

SEC. 233. There is hereby created a Commission to be designated as State Tax Commission of Maryland composed of three persons who shall be resident taxpayers of the State and qualified voters thereof and not more than two of whom shall be of the same political party. One of said Commissioners shall be a resident of the City of Baltimore, one a resident of the Counties of the Eastern Shore of Maryland, and the other a resident of the Counties of the Western Shore of Maryland. The term of each of the three members shall be six years and until his successor qualifies and shall commence on the first Monday of June next ensuing his appointment; except that one of the Commissioners named in this Act shall serve for two years, one for four years, and one for six years, and if for any reason the term of six years shall be held unconstitutional then the term of each shall be two years. The present Commission created by this Act shall be Oscar Leser, who shall serve for two years, Lewin W. Wickes, who shall serve for four years, and Arthur P. Gorman, Jr., who shall serve for six years and who shall be Chairman of said Commission during his term, after which time the chairman of said Commision shall be designated by the Governor of the State, and all subsequent appointments shall be so made that not more than two Commissioners shall at any time be of the same political party. Each Commissioner shall receive a salary of Three Thousand dollars ($3,000) per annum, payable, out of the State Treasury by the State of Maryland. The Chairman of said Commission shall also receive the sum of Three Thousand Dollars per annum which shall be paid out of its funds by the Mayor and City Council of Baltimore, to said Chairman of said Commission, as an employee of said municipal corporation; and each of the other two Commissioners shall receive in addition to said Three Thousand Dollars per annum aforesaid the sum of Two Thousand Dollars per annum which shall be paid out of its funds by the Mayor and City Council of Baltimore to each of said other two Commissioners as employees of said municipal corporation;

and before entering upon office he shall take the oath prescribed by the Constitution. In case of any vacancy the Governor shall appoint a competent person to fill the same, subject to the limitations of appointment contained in this Act, and the Governor shall appoint one Commissioner every two years as the term of the Commission named in this Act may expire, subject to the limitations hereinbefore mentioned. The State Tax Commission immediately after its organization shall appoint a Secretary to serve at the pleasure of the State Tax Commission, who shall receive a salary of Three Thousand Dollars ($3,000) per annum, payable out of the Treasury of the State of Maryland, and they shall also have the power to employ such others clerks and stenographers as the Commission may deem necessary, and the Commission shall have the power to prescribe their duties and fix their compensation and the salaries of such employees shall be payable out of the State Treasury of the State of Maryland as other State employees are now paid. The main office of the State Tax Commission shall be in Baltimore City. The Commission may appoint an attorney at law of the State of Maryland to be and act as the general counsel of said Commission, whose salary shall be fixed by said Commission.

234. It shall be the duty of the State Tax Commission and it shall have power and authority—

(1) To have general supervision over the administration of the assessment and tax laws of the State.

(2) To have general supervision over all supervisors of assessments and to have the final determination of assessments of all property in all the Counties, Cities, Towns and Villages of the State, to the end that all taxable property shall be placed upon the assessment books and equalized between persons, firms and corporations in all the Counties, Districts, Cities, Towns and Villages of the State, so that all persons, firms and corporations shall be assessed alike for like kinds of property. In case any property which under the law is subject to taxation has not been assessed, such property may be placed on the books at any time and shall be subject to taxation for the current and previous

years, not exceeding four years in all, in the same manner as other property is subject to taxation.

(3) To establish the form of the reports of assessment, assessment books and collection books, and of schedules, notices and other papers, and forms for financial and statistical reports of County Commissioners and the Appeal Tax Court of Baltimore City to the State Tax Commission. The State Tax Commission is empowered to require all these officials to use all forms furnished or prescribed by the State Tax Commission, and shall have power to examine all books of local governing bodies, assessing officials and tax collectors.

(4) To provide for a uniform system of accounts to be used by all collectors of State taxes and to require the use thereof.

(5) To formulate, whenever the Commission shall deem it practicable, standards or units for the assessment of various kinds of property, and to issue instructions to local supervisors of assessments in regard thereto and to require the use thereof. To confer with County Commissioners and the Appeal Tax Court of Baltimore City, and visit each County as often as necessary.

(6) To enforce and execute a continuing method of assessment and to require that all property in the State be reviewed for assessment at least once in every five years.

(7) To require individuals, firms and corporations to furnish complete information as to ownership of all property taxable or exempt, and as to all facts relative to the value thereof.

(8) To investigate at any time, on its own initiative, assessments against any or all properties or assessments in any County, District, City, Town or Village.

(9) To inquire into the provisions of the law of other States and jurisdictions regarding jurisdiction and situs of property for purpose of taxation; to confer with Tax Commissioners of other States regarding the most effectual and equitable methods of assessment, and particularly regarding the best methods of reaching all property and avoiding conflicts and duplication of taxation of the same property, and

to recommend to the Legislature such measures as will tend to bring about uniformity of methods of assessment and harmony and co-operation between the different States and jurisdictions in matters of taxation.

(10) To provide for a system for inspection of State licenses and to require the payment of the proper fees fixed by law therefor.

(11) To confer with the Governor, Comptroller and Treasurer of the State as to the administration of the tax laws, and to report biannually to the General Assembly its proceedings and recommendations.

235. In each County of the State and in Baltimore City there shall be a supervisor of assessments, who shall be a resident thereof, and shall be appointed by the State Tax Commission from a list of five persons submitted to the State Tax Commission by the County Commissioners of each County, and by the Mayor of Baltimore City in case of the supervisor of Baltimore City, who shall be removable at any time by the State Tax Commission for incompetency or cause. He shall hold no other public office or profit. In case the County Commissioners of any County or Mayor of Baltimore City shall fail to furnish such a list within twenty days' notice (after being requested so to do), the State Tax Commission shall have power to fill such office immediately after the expiration of such time.

The supervisor of assessments in each County shall have general supervision over assessment of all property in the County. He shall not be required to make assessments which shall be made by the County Commissioners, or other proper authorities as now required by law, but he shall have power and it shall be his duty to appeal to the State Tax Commission from any and all assessments or rulings which he shall consider improper. He shall visit every district at frequent intervals, and obtain all necessary data and information, keep posted on sales in the County and conditions attending said sales, and whenever possible shall report the sales and consideration of all transactions within twenty days to the State Tax Commission and the County Commissioners. From these reports and all evidence obtainable,

it shall be determined by the respective County Commissioners whether the assessment against any property or whether any unit of assessment values used in any district or County shall be changed, and in case the data submitted is not satisfactory either to the State Tax Commission or to the County Commissioners, either shall have the power to obtain additional data, and in case the assessment so determined upon is not satisfactory, the State Tax Commission or the County Commissioners shall order a new valuation.

236. The supervisor of assessments of Baltimore City shall have access to the assessment books of Baltimore City, and all records of the Appeal Tax Court of Baltimore City, and to returns of all assessments made by assessors. He shall have authority to inquire into the assessment of any or all properties and to report the results of any investigations to the Appeal Tax Court of Baltimore City and to the State Tax Commission, and to recommend such changes as he may deem proper, and he shall have power to appeal to the State Tax Commission from any assessment or ruling of the Appeal Tax Court.

Upon any investigation which shall prima facie establish inequality of valuation of any part of Baltimore City or any class or kind of property, he shall immediately report such investigation with recommendations to the State Tax Commission, which shall have the power to order the Appeal Tax Court to reassess such property and to have the same entered on the assessment books.

237. In case of failure of the State Tax Commission to agree upon any assessment with the County Commissioners of any County, or with the Appeal Tax Court of Baltimore City, as the case may be, then and in that case the determination of the State Tax Commission shall prevail. Nothing herein contained shall be construed to limit the power of the State Tax Commission to make an investigation of assessments upon its own initiative in any part of the State.

238. Any taxpayer, taxpayers, or City, Town or Village may demand a hearing before the County Commissioners or Appeal Tax Court of Baltimore City as to the assessment of any property or any unit of tax value, and no formal pro-

ceedings shall be required. And in case of any hearing, the parties may file data and information showing why any assessment is deemed erroneous, and the County Commissioners or Appeal Tax Court of Baltimore City shall hear and determine the matter.

Any taxpayer, taxpayers, or City, Town or Village having been assessed by the order of the County Commissioners or Appeal Tax Court of Baltimore City, after a hearing as hereinbefore provided, may appeal to the State Tax Commission; or the supervisor may appeal from any decision.

There shall be an appeal to court on puestions of law only from decisions of the State Tax Commission to the court in that County where the property is situated, if real estate or tangible personal property, or where the owner resides, if intangible personal property, and the State Tax Commission is empowered to participate in any proceeding in any court wherein any assessment or taxation question is involved.

239. The supervisors of assessments shall confer frequently with the State Tax Commission, and submit questions for determination to that Commission, and shall receive instructions for their guidance in the supervision of the valuation and assessment of properties, both real and personal, and keep constantly informed what supervisors of assessments in other parts of the State are doing.

The supervisors shall be furnished an office at the County seat by the County Commissioners of each County, and by the Mayor in Baltimore City, and allowed such clerical help as the County Commissioners or Mayor of Baltimore City, respectively, shall determine; and the State Tax Commission shall determine, by a general and uniform rule, what data and information, if any, is not open for public inspection. This Act is not intended to impose any limitation on the power of local bodies to employ assessors.

240. The salary of the supervisors shall be paid by the several Counties and shall be based on the agregate value of property subject to taxation under his supervision. In those Counties where the total value of all property shall not exceed $5,000,000, he shall receive an annual salary of

$600. If the aggregate value shall be over $5,000,000 and less than $10,000,000 he shall receive $800.

If over $10,000,000 and less than $20,000,000—$1,000.
If over 20,000,000 and less than 30,000,000— 1,200.
If over 30,000,000 and less than 50,000,000— 1,500.
If over 50,000,000 and less than 75,000,000— 1,800.
If over 75,000,000 and less than 100,000,000— 2,000.
And if over $100,000,000 he shall receive $2,400.

The supervisor in Baltimore City shall be paid $2,400.

Such salary shall be payable monthly and the County Commissioners of each County and the Mayor and City Council of Baltimore are hereby directed to raise such sum annually as will pay said salaries, and in case the expenditures for any County or Baltimore City have been fully computed at the time that this Act shall take effect, then the County Commissioners of said County or proper officials in Baltimore City shall be required to provide in the next levy for the payment of the salary from the date of the supervisor taking office.

241. The State Tax Commission shall adopt a seal and shall keep a full record of its proceedings, and have the power to make rules, orders and directions as it may deem necessary to carry into effect the objects of this Act. It shall have power also to provide a system for hearings on petitions filed before it, and shall adopt such rules of proceedings, manner of taking testimony and argument and such regulations in regard to notices of assessment, hearings and appeals as it may deem proper. The Commission, or any member of the Commission, shall have the power to compel the attendance of witnesses, who shall be notified through the respective sheriffs' offices, or by any appointee of the State Tax Commission, and said Commission or any member may require the production of books and papers before it or him, and may examine witnesses or cause witnesses to be examined under oath, which any of its members may administer, and in case of the failure of any person or corporation to obey any order of the said Commission, he, she or it shall be held liable to be punished as for contempt of said Commission, as hereinafter provided. The Commis-

sion may, by order, as occasion shall require, refer to one of its members the duty of taking testimony in any matter pending before it and reporting thereon to the Commission, but no determination shall be made therein except by majority vote. The Commission may, for sufficient reason, meet in any part of the State, in which case mileage and other reasonable expenses shall be allowed.

242. The determination of any matter brought before said Commission shall be evidenced by a judgment duly signed by at least two of its members and filed with its secretary; copies thereof duly certified by said secretary and sealed with the seal of the State Tax Commission shall be evidence in any cause or proceedings. When the said Commission shall be satisfied that any person, officer or corporation has failed to comply with its said judgment or order, although fully apprised thereof, it shall have full power upon procedure and rules adopted by it to attach such delinquent for contempt and to punish accordingly as courts of record have power to punish for contempt.

243. In case any section or any provision of this Act shall be questioned in any court and shall be held unconstitutional or invalid, the same shall not be held to affect any other section or provision of this Act. All Acts and parts of Acts inconsistent herewith shall be and the same are hereby repealed, but said repeals shall not revive any laws heretofore repealed nor affect any pending suits or proceedings as to the valuation and assessment of property.

244. On all appeals to the State Tax Commission herein provided all the provisions of the Act of 1908, Chapter 167, relating to appeals to the Baltimore City Court, and of the Act of 1910, Chapter 430, relating to appeals to the Circuit Courts in the several Counties of the State, shall continue in force so far as the same are applicable and not inconsistent with the other provisions of this Act, except only that the State Tax Commission shall be substituted for, and exercise the functions now exercised under said Acts by said Baltimore City Court and the Circuit Courts of the several counties, respectively. Appeals from any action of the State Tax Commission to court, as authorized by Sec-

tion 238 hereof, shall be taken within thirty days of such action by petition setting forth the question or questions of law which it is desired by the appellant to review, and notice thereof shall be given by summons or subpoena, duly served on all parties directly in interest, by the Sheriff of the county or city in which said appeal is filed, and shall be heard and decided by the court, sitting without a jury. All appeals to court in Baltimore City shall be to the Baltimore City Court, and there shall be a further right of appeal to the Court of Appeals from any decision of the Baltimore City Court or of the circuit courts of the several counties. Such appeals must be taken within ten days of the final judgment or determination of the lower court. The power to assess shall in all cases include the power to classify for taxation, and the power to review an assessment on appeal shall in all cases include also the power to review any question of classification for taxation.

SEC. 2. *And be it further enacted,* That the office of State Tax Commissioner be and the same is hereby abolished immediately upon the qualification of the Commission hereby created and all the duties imposed upon or powers given by existing law (or by any Act or resolution passed at the present session of the Legislature) to the State Tax Commissioner shall devolve upon the State Tax Commission; and wherever any duties are imposed by existing law (or by any Act or resolution passed at the present session of the Legislature) upon persons or corporations to make report to the State Tax Commissioner or to perform any other act or thing in respect to his office, such duties, reports, acts and things shall be made and performed to the State Tax Commission. Wherever the State Tax Commissioner, by virtue of his office, is a member of any board, committee or other similar body, the chairman of the State Tax Commission shall hereafter serve in his place, provided that said repeal shall in no way affect the validity of any action taken by the State Tax Commissioner before this Act takes effect.

SEC. 3. *And be it further enacted,* That the sum of $30,000 per annum or so much thereof as may be necessary to provide for the payment of the salary of the members of

the Commission, the Secretary and employees and expenses thereof is hereby appropriated annually for the purpose of carrying into effect all of the provisions of this Act.

THE BANK TAX ACT.

THE LAW REDUCING THE BANK TAX IN MARYLAND FROM TWO TO ONE PER CENT.

ACT OF 1914, CHAPTER 797.

AN ACT to add two additional Sections to Article 81 of the Code of Public General Laws of Maryland, title "Revenue and Taxes," to be known as Section 153-A and 162-A, as contained in the Code of 1912, and to thereby provide a method for the assessment and taxation of the stock of banks (State and National) located and doing business in this State, and fix a rate of taxation for all County, City and Municipal purposes thereon.

SEC. 1. *Be it enacted by the General Assembly of Maryland,* That the following two additional Sections be and the same are hereby added to Article 81 of the Code of Public General Laws of Maryland, title "Revenue and Taxes," to be known as Sections 153-A and 162-A, respectively, and to respectively follow Section 153 and Section 162 in said Article as contained in the Code of 1912, which new Sections shall read as follows:

153-A. In making the annual report to the State Tax Commissioner provided for in the preceding Section of this Article, the president, cashier or other chief officer of every bank (State and National), located and doing business in this State, shall expressly state in such report the amount of the capital stock paid in, the amount of surplus, and the amount of undivided profits, together with such other information as may be required by the said Commissioner under the provisions of the preceding Section.

162-A. The State Tax Commissioner shall take into consideration, in determining the taxable values of the shares of stock of any bank (State or National), located and doing business in this State (except in case of such banks as are in liquidation), the capital stock paid in its surplus and undivided profits, as provided for in Section 153-A of this Act and from the valuation which the State Tax Commissioner may find, shall be deducted the assessed value of the real property belonging to and assessed to such bank, and the assessed value of all other property or investments held or owned by banks now authorized by Chapter 124 of the Acts of 1908 of the General Assembly of Maryland to be so deducted, and the remainder shall be by the State Tax Commissioner divided by the number of shares of such capital stock outstanding for the purpose of determining the respective taxable value of each share, as provided in the preceding Section, and there shall be paid on such valuation the regular rate of taxation for State purposes, and there shall also be paid on such valuation one per cent (and no more) in all for all County, City and Municipal taxation, which said tax shall be distributed among the different jurisdictions entitled to tax the same shares, in the proportion which the rate of each juridiction, bears to the aggregate of the rates of such jurisdictions, and said tax shall be in lieu of all other taxes whatsoever, for County and Municipal purposes upon the shares of stock and the owners of stocks in such banks. But in the case of such banks as may be in the course of liquidation, the aggregate value of all shares thereof, for the purpose aforesaid, shall be determined by the State Tax Commissioner from the assets and liabilities thereof, and upon such valuation of such shares so determined, the regular rate of taxation for State and local purposes, shall be paid, in the manner provided in this Article. Credits by reason of the ownership by any such bank or banks of the Baltimore City Burnt District Loan Stock, issued under Chapter 468 of the Acts of 1904, the Water Loan, issued under Chapter 333 of the Acts of 1902, and the Conduit Loan, issued under Chapter 246 of the Acts of 1902, whether heretofore or hereafter issued,

and also all other credits authorized and provided for under said Chapter 124 of the Acts of 1908 of the General Assembly of Maryland shall be allowed as provided for in said last mentioned Act, but shall be computed on the basis of the rates for State, County, City and Municipal taxation, respectively, herein prescribed; no such credits, however, shall be allowed in any case where the officer making such returns for such bank or banks shall fail to state in such return that said investments are owned by the bank of which he is such officer, and are not held by such bank as a security for any loan, or as a collateral for any payment or other purpose. All deductions required to be made by the City Collector of Baltimore City by the provisions of said last mentioned Act, shall be made in accordance with said provisions. Nothing in this Section shall be construed to relieve any corporation from the payment of any franchise tax required to be paid by the provisions of Section 89 of this Article; provided, that nothing herein shall affect the tax levy for 1914.

SEC. 2. *And be it further enacted,* That this Act shall take effect from the date of its passage, and that all other laws inconsistent herewith be and the same are hereby repealed, in so far as the same are inconsistent with the provisions of this Act, but no further.

ACT TO EXEMPT MANUFACTURING PLANTS THROUGHOUT THE STATE.

ACT OF 1914, CHAPTER 528.

At the sesion of 1914 the General Assembly of Maryland passed an Act, amending sections 4, 162 and 164 of Article 81 of the Public General Laws as codified in the Annotated Code of 1912, to encourage the development of manufacturing industries by exempting the tools, machinery, manufacturing implements and engines of corporations, firms individuals actually engaged in manufacturing, providing.

that such exemption shall be granted only when authorized by the County Commissioners of granted only when authorized by the County Commissioners or the Mayor and City Council of Baltimore.

The Act provides that "the County Commissioners of any County shall by resolution determine by a vote of its members whether there shall be in their respective County the exemption of the tools, machinery, manufacturing implements and engines of corporations, firms and individuals actually engaged in manufacturing, and duly certified to the State Tax Commissioner of Maryland; and the Mayor and City Council of Baltimore shall by ordinance determine whether the tools, machinery, manufacturing implements and engines of corporations, firms and individuals actually engaged in manufacturing within the City of Baltimore shall be exempt from taxation; and wherever no determination has been made and duly certified to the State Tax Commissioner, then and in that case, the tools, machinery, manufacturing implements and engines of corporations, firms and individuals, actually engaged in manufacturing, shall be requierd to pay all taxes assessed against said property."

THE ACT FIXING THE TAX RATE ON DIVIDEND PAYING SECURITIES AT FIFTEEN CENTS FOR THE STATE AND THIRTY CENTS FOR COUNTIES AND CITIES.

ACT OF 1914, CHAPTER 411.

AN ACT to repeal Section 214, of Article 81 of the Annotated Code of Public General Laws of 1912, title "Revenue and Taxes," and to re-enact the same with amendments.

SEC. 1. *Be it enacted by the General Assembly of Maryland,* That Section 214 of Article 81 of the Annotated Code

of Public General Laws of 1912, title "Revenue and Taxes," be and it is hereby repealed and re-enacted so as to read as follows:

SEC. 214. All bonds, certificates of indebtedness or evidence of debt in whatsoever form made or issued by any public or private corporation incorporated by this State or any other State, territory, district or foreign country, or issued by any State (except the State of Maryland), territory, district or foreign country not exempt from taxation by the laws of this State, and owned by residents of Maryland, shall be subject to valuation and assessment to the owners thereof in the county or city in which such owners may respectively reside, and they shall be assessed at their actual value in the market, and such upon which no interest shall be actually paid shall not be valued at all, and upon such valuation the regular rate of taxation for State purposes, but in no event more than fifteen cents on each one hundred dollars, shall be paid, and there shall also be paid on such valuation thirty cents and no more on each one hundred dollars for county, city and municipal taxation in such county or city of this State in which the owners may reside. All shares of stock or shares in any bank other than a national bank, or in any company or corporation incorporated by or located in and doing business in any other State, or District of Columbia, or in any territory or foreign country owned by residents of this State, shall be valued and assessed for the purpose of State, county and municipal taxation to the owners thereof in the county or city in which such owners may reside, and said shares shall be assessed and valued at their actual value in the market, and those upon which no dividend shall be actually paid shall not be valued at all, and upon the valuation so made the regular rate of taxation for State purposes, but in no event more than fifteen cents on each hundred dollars, shall be paid, and there shall also be paid on such valuation thirty cents, and no more, on each one hundred dollars for county, city and municipal taxation in such county or city of this State in which the owners may reside.

SEC. 2. *And be it further enacted,* That this act shall take effect on the day of its passage, provided that nothing herein contained shall affect taxes for the year 1914 or any year prior thereto.

THE ACT EXEMPTING STATE, COUNTY AND CITY BONDS FROM TAXATION.

ACT OF 1914, CHAPTER 43.

AN ACT to add a new Section to Article 81 of the Code of Public General Laws, title "Revenue and Taxes," sub-title "Exemptions," to be designated 4-A and to follow Section 4 of said Article.

SEC 1. *Be it enacted by the General Assembly of Maryland,* That a new Section be and the same is hereby added to Article 81 of the Code of Public General Laws, title "Revenue and Taxes, sub-title Exemptions," to be designated 4-A and to follow Section 4 of said Article, and to read as follows:

4-A For the year nineteen hundred and fourteen and thereafter all bonds, stocks, certificates of indebtedness or other obligations in whatsoever form hereafter to be issued by the State of Maryland, or by any County, City or Municipal Corporation or other political sub-division of this State, either under a law heretofore passed or under a law hereafter to be passed, and all bonds, stocks, certificates of indebtedness or other obligations in whatsoever form heretofore issued by any County or Municipal Corporation of this State and which, prior to the passage of this Act, have been sold under terms rendering such County, City or Municipal Corporation liable for the State Tax thereon on behalf of the holders, shall be exempt from taxation for State, County, Municipal and other local purposes; but nothing herein contained shall be construed to deprive corporations of the credits, deductions and allowances on their shares provided for in Section 163 of Article 81, of Bagby's Code of Public

Civil Laws, which shall continue to be allowed to the same extent as if all of the stock debt of this State upon which, but for the passage of this Act, the State tax would have been deducted by the Treasurer, and all of the stock debt of the City of Baltimore on which, but for the passage of this Act, the State taxes would have been paid, or payable by said city, had continued subject respectively to said deductions or payments of taxes without any change hereby.

SEC 2. *And be it further enacted,* That this Act shall take effect from the date of its passage, and all Acts and parts of Acts inconsistent herewith are hereby repealed.

AN ACT DEFINING THE MANNER IN WHICH THE REAL AND PERSONAL PROPERTY AND SHARES OF STOCK OF "ORDINARY BUSINESS CORPORATIONS" SHALL BE VALUED AND ASSESSED.

ACT OF 1914, CHAPTER 324.

AN ACT to repeal Sections 100 to 105, both inclusive, of Article 81, as the same are numbered and set forth in the annotated Code of the Public Civil Laws of Maryland, as legalized by Chapter 21 of the Acts of 1912 of the General Assembly of Maryland, title "Revenue and Taxes," sub-title "Bonus Tax on Capital Stock," and to make all such Sections and parts of Sections of said Article 81, title "Revenue and Taxes," as relate to the taxation of the capital stock of corporations defined in this Act as "ordinary business corporations," and any amendments thereof, inapplicable to such "ordinary business corporations;" and to provide as a substitute for the Sections of said Article so repealed or made inapplicable, six new Sections as an addition to Article 23 of said annotated Code of Public Civil Laws of

Maryland, to follow immediately after Section 88 of said Article 23, and to be numbered respectively Sections 88-A, 88-B, 88-C, 88-D, 88-E and 88-F, providing for the payment of a bonus tax by certain corporations, prescribing the method of taxation of "ordinary business corporations," and defining "ordinary business corporations."

SEC. 1. *Be it enacted by the General Assembly of Maryland,* That Sections 100 to 105, both inclusive, of Article 81, as the same are numbered and set forth in the Annotated Code of the Public Civil Laws of Maryland, as legalized by Chapter 21 of the Acts of 1912 of the General Assembly of Maryland, tittle "Revenue and Taxes," sub-title "Bonus Tax on Capital Stock," be and the same are hereby repealed; and that all such Sections and parts of Sections of said Article 81, title "Revenue and Taxes," as relate to the taxation of the capital stock of corporations defined in this Act as "Ordinary Business Corporations," and any amendments thereof, be and the same are hereby made inapplicable to such "Ordinary Business Corporations;" and that as a substitute for the Sections of said Article so repealed or made inapplicable, the following six new Sections shall be and the same are hereby enacted as an addition to Article 23 of said Annotated Code of the Public Civil Laws of Maryland, to follow immediately after Section 88 of said Article 23, and to be numbered respectively Sections 88-A, 88-B, 88-C, 88-D, 88-E and 88-F, and to read respectively as follows:

SEC. 88-A Every corporation of this State having a capital stock except railroads and building or homestead associations, shall, at the time of incorporation, pay for the use of the State a bonus tax at the rate of twenty cents for every thousand dollars of the amount of its authorized capital stock, and at the time of amending its articles of incorporation to effect an increase of its authorized capital stock, a like bonus tax upon the authorized amount of any such increase thereof, but in no case shall such payment be less than twenty dollars; provided, however, that in the case

of the consolidation of existing corporations to form a new corporation such new corporation shall be required to pay the bonus tax herein prescribed, for only the amount of its capital stock in excess of the aggregate amount of capital stock of the constitutent corporations; and the amount of such bonus tax shall be deposited with the State Tax Commissioner, in cash or in such other form as shall be acceptable to him, when the certificate of incorporation, or the articles of amendment increasing the capital stock, are filed, who shall account quarterly therefor to the Comptroller and pay the same forthwith to the State Treasurer for the use of the State.

SEC. 88-B. All corporations having a capital stock, shall for the purpose of this Act, be ordinary business corporations, and are hereby so defined, except railroad companies whose roads are worked by steam, electric or other power, street and passenger railways, steamship and steamboat companies, and all other common carriers, telegraph, cable, telephone, express, transportation, parlor car, sleeping car, and oil pipe companies, turnpike companies, bridge companies, and sewerage disposal companies, safe deposit and trust companies, guarantee and fidelity companies, insurance companies of all kinds, electric light, electric construction, heating, refrigerating, water and gas companies, building or homestead associations, state, national and savings banks, or savings or moneyed institutions. Every ordinary business corporation created or to be created under the laws of this State shall from and after the expiration of the year 1914 be exempt from taxation on its shares, nor shall its shares be assessed or valued, for the purpose of taxation in the hands of the holders thereof.

SEC. 88-C. Every ordinary business corporation shall be subject to taxation upon its property, real and personal which would be taxable in this State if such corporation were a natural person and engaged in a similar business, and the taxes thereon shall be levied, assessed and collectible in the following manner and not otherwise: On all real property the taxes shall be levied and assessed, and shall be payable at its situs, as now provided by law. All personal

property of such corporation, exclusive of bonds, shares of stock and securities as enumerated in Article 81, Section 214 of the Code of Public Civil Laws (1912) and property which by law is exempt from taxation, and exclusive of manufacturing plants situated in any city or county in which by law or ordinance manufacturing plants are exempt from county or municipal taxation shall be valued and assessed by the State Tax Commissioner or any State officer or officers who may be authorized to exercise the functions now or formerly exercised by the State Tax Commissioner, and when so valued, the whole personal assessment shall be apportioned between the several counties and cities of the State by the State tax Commissioner or other State officers, in the proportion which the number of shares of stock of such corporation held by residents of each county or city of this State bears to the total number of shares of stock of such corporation outstanding, stock of such corporation held by non-residents of this State being treated for this purpose as if held by residents of the county, city or municipality where the main office of such corporation in this State for the transaction of business is actually situated, and when so apportioned the State, County and municipal taxes thereon shall be payable by such corporation to the officers authorized to collect State, County and Municipal taxes at the residence of such stockholders at the tax rate fixed by the State and County, City or Municipality at the residence of such stockholders, bonds, shares of stock and securities as enumerated in Article 81, Section 214 of the Code of Public Civil Laws (1912) owned by an ordinary business corporation shall be valued and assessed in the manner and taxes shall be paid thereon at the rate provided in said Article 81, Section 214 as if owned by a natural person.

SEC. 88-D. From and after the expiration of the year 1914, every such business corporation shall pay annually to the State Treasurer on or before the first day of May in each year succeeding the date of its incorporation, an annual tax for its franchises to be a corporation (in addition to any tax now imposed by law) at the following rate, that is to

say: On the amount of its capital stock issued and outstanding on the first day of the preceding January for the first five thousand dollars or less the sum of ten dollars; for every one thousand dollars or fractional part thereof in excess of said five thousand dollars up to and not greater than fifty thousand dollars the additional sum of one dollar; for every additional fifty thousand dollars or fractional part thereof in excess of said fifty thousand dollars up to and not greater than five hundred thousand dollars the sum of twenty five dollars; if the amount of such capital stock is more than five hundred thousand dollars and not more than five million dollars there shall be an additional annual franchise tax on such excess over five hundred thousand dollars at the rate of two hundred and fifty dollars for every million dollars or fractional part thereof and on every million dollars in excess of five million dollars the additional tax on such excess shall be at the rate of one hundred dollars for each million dollars or fractional part thereof. And for the purpose of this Section, the entire authorized capital stock of such corporation, as shown by the charter, certificate of incorporation or any amendment thereof shall be taken as issued, unless on or before the first day of March in each and every year the corporation shall file with the State Tax Commissioner a certificate signed and sworn to by two of its directors, showing the actual number of its outstanding shares as of the first day of the preceding January. The Comptroller shall annually on or before the first day of April in each year, transmit to such corporation a bill for the amount of its franchise tax, and such tax shall be payable on or before the first day of May following, and shall bear interest thereafter; if such tax shall not be paid before the first day of November following, a penalty of ten per cent. on the amount thereof shall be added, and the Comptroller shall place the bill therefor in the hands of the Attorney General for collection by suit in the name of the State and the failure of any such corporation to pay such tax, interest and penalty shall constitute a cause for forfeiture, for which dissolution proceedings may be instituted as above provided by this Article.

SEC. 88-E. One-half of the annual tax for the franchise provided for by Section 88-D of this Article, together with the interest and penalty, if any, shall be held by the Treasurer for the use of the State, and the other half shall be paid by him forthwith to the County or City according to the number of shares held by the residents of such county or city.

SEC. 88-F. Excepting ordinary business corporations, all corporations of this State, including their franchises, shares and property, and national banks located in this State shall remain and be subject to taxation, as now is or hereafter may be provided by law, and nothing herein shall be construed to exempt an ordinary business corporation from the payment of any license tax or charge imposed by law.

AMENDMENTS TO THE CITY CHARTER RELATING TO METHODS OF TAXATION.

ACT OF 1914, CHAPTER 532.

AN ACT to repeal and re-enact, with amendments, Sections 40, 43, 51, 164-A, 167 and 171 of Article 4 of the Code of Public Local Laws, title "City of Baltimore," sub-title "Charter."

SEC. 1. *Be it enacted by the General Assembly of Maryland,* That Sections 40, 43, 51, 164-A, 167 and 171 of Article 4 of the Code of Public Local Laws, title "City of Baltimore," sub-title "Charter," be and the same are hereby repealed and re-enacted with amendments, so as to read as follows:

40. The Board of Estimates shall, on the first day of October, or as soon thereafter as practicable, in the year eighteen hundred and ninety-eight and in each succeeding year, procure from the proper municipal department and shall send, with the said ordinance of estimates, to both branches of the City Council, a report showing the taxable basis for the next ensuing fiscal year, and the amount which

can reasonably be expected to be realized by taxation for said year. The report shall contain an aggregate statement of all the moneys to be expended during the next ensuing fiscal year by the City, as set forth in said ordinance of estimates, as well as of any other sums, if such there be, which the City may be required to expend during the said year for any purpose or purposes not included in the ordinance of estimates, and it shall also state the total income which can reasonably be expected to be received by the City for the next ensuing fiscal year from licenses, fees, rents and all other charges, including the amount believed to be collectible from taxes in arrears. The report shall show the difference between such anticipated expenditures and receipts of the City, and shall state a rate for the levy of taxes sufficient to realize the amount required to meet the said difference. In the ordinance making the annual levy of taxes, which ordinance shall be passed by the Mayor and City Council of Baltimore in the month of November in each year, and as soon as practicable after the passage of the ordinance of estimates, the Mayor and City Council of Baltimore shall fix a rate of taxation not less than the rate stated in the aforesaid report; so that it shall not be necessary at any time for the City, its officers or agents, to create a floating debt to meet any deficiency, and it shall not be lawful for the City, its officers or agents, to create a floating debt for any such purpose. The taxes levied under said ordinance in the month of November in each year shall be the taxes to be collected for the fiscal year next ensuing after the said month of November and shall be due and may be paid to the City Collector on or after the first day of January next ensuing. The taxes included in said levy on real estate or chattels real, and on all forms of personal property including shares of stock and other property, valued or subject to valuation by the State Tax Commissioner shall be in arrears on the first day of July next ensuing the date of their levy, and the taxes on all forms of property after they become in arrears as aforesaid shall bear interest at the rate of six per centum per annum.

43. Whenever it shall become necessary to sell any part or parcel of ground in the City of Baltimore, improved or unimproved, for the payment of any taxes or assessment, of any nature or kind whatever, levied or charged, the City Collector shall first give notice by advertisement published once a week for four successive weeks in two of the daily newspapers published in said city, one of which shall be in the German language, and in every issue of the Municipal Journal during said four weeks, that he will sell said property at public auction on the day in said advertisement mentioned. Said notice shall state the name of the person, when known, to whom such a parcel of ground is assessed, the amount of taxes due on the same, and what improvements, if any, are on said parcel of ground, and to properly describe said property the City Collector shall procure a description from the Land Records and no survey shall be made unless a proper description cannot be obtained from the Land Records, and no charge for survey shall be made unless a survey is actually made. If a proper description cannot be obtained from the Land Records, the City Surveyor shall, upon direction of the City Collector make a proper survey and furnish a description and plat to the City Collector, and the sum of three dollars for the cost of such survey shall be added to the tax bill, and collected in the same manner as the bill itself, and paid over to the City Register for the use of the City. The City Collector shall, before advertising said property for sale give to the person or persons so in arrears, or to one of them, if more than one, or leave at his or her or their residence, or last known residence of one of them, and if no such residence be known, there shall be left upon the premises so to be sold for taxes, a statement of his or her or their indebtedness, and not less than thirty days' notice of his (said Collector's) intention, if the bill is not paid, to enforce the payment thereof by distraint or execution. Provided, however, that this paragraph shall not apply to or affect the present City Surveyor.

51. The City Collector shall at least two weeks before the taxes become in arrear give notice, by advertisement in two

daily papers published in Baltimore City and in the Municipal Journal, of the day on which all taxes for the current fiscal year become in arrear; and shall, on the application, in person or by agent or by mail, of any person to whom property is assessed, deliver or send by mail a bill showing the amount of taxes due by such person. Two weeks before the day on which such taxes shall by law be in arrear, he shall give notice by advertisement in the same way that all taxes not paid on or before that date will be in arrears, and that the property on which said taxes are levied will then be subject to be sold for taxes. And said notice shall further state that unless the taxes are paid before they become so in arrear, an amount equal to one per centum per annum on the gross amount thereof, accounting from the date when said taxes become in arrear shall be added to each bill for taxes in arrear; and if the same be not paid before they so become in arrear an amount equal to one per centum per annum of the gross amount of each bill, accounting from the time said taxes became in arrear to the time of the payment thereof, shall be added thereto as a penalty, and collected in the same manner as the bill itself, said penalty to be paid to the City Collector and by him to the City Register to the credit of the Mayor and City Council. In the case of escaped or omitted property the penalty herein provided, and also interest shall be added to the tax bills for the current and back years in the same manner as if such property had not escaped or been omitted.

161-A. The Appeal Tax Court of Baltimore City shall have the power at any time to value and assess all personal property and to revise such valuations and assessments, and to value and assess and to revise all valuations and assessments of real property in said city, and to lower or increase said assessment of real or personal property, and to take steps for the discovery and assessment of all unassessed property of every kind. And it shall be the duty of said Court, at least once in every five years, to carefully make such general revision of all of the assessable property in said City. Whenever said Court shall propose to alter or change any assessment, or make any new assessment, they shall, be-

fore such assessment is made, give at least ten days' notice thereof, in writing, served upon the owner of the property to be assessed or re-assessed, or upon the person in possession of the property to be assessed, or in whose custody the same may be, or, if it be land and no one be in apparent occupancy thereof, then by a notice posted on said land. Said notice shall contain such interrogatories as may be reasonably necessary to enable said Court to correctly assess the property. Said interrogatories shall be answered, signed and sworn to by the owner of the property, or by the authorized agent of such owner, having knowledge of the facts inquired for in said interrogatories. Such affidavit may be made before any Judge of the Appeal Tax Court, or any assessor thereof, who is hereby authorized to take the same, and who shall take the same without charge; or such affidavit may be made before any officer authorized by law to take affidavits. If any person upon whom such interrogatories are served shall neglect or refuse to answer, sign and make oath to the same, personally or by authorized agent as aforesaid, within ten days after service of the same, the Appeal Tax Court shall proceed to assess the property therein referred to, according to law, upon their best information and judgment in the premises, and shall add thereto an additional assessment of 20% of the amount of such assessment so ascertained, as a penalty for such failure or refusal to answer said interrogatories. Said additional assessment may be abated, in whole or in part, by the Appeal Tax Court, at any time before October first in any year, to take effect for the ensuing year, upon the filing of said interrogatories answered, signed and sworn to as above provided, and the Court shall thereupon fix the assessment at such figure as will represent the proper valuation of such property. Nothing herein, or done in pursurance hereof, shall be construed to relieve any escaped or omitted property from being assessed when discovered, as may be provided by law. The said Court, in order to make any valuation, assessment, revaluation or reassessment, shall have power to summon before it any person, and to interrogate him or her in reference to the existence, situation, ownership or

value of any property liable to assessment by said Court, or in reference to the taxable residence of any person, and any person so summoned and refusing to appear, and any person refusing to be sworn, or to answer touching said value, revaluation or assessment, or touching his or her property, or touching any other fact relevant to any inquiry before said Court, shall be liable to prosecution therefor, and, upon conviction, shall be fined not exceeding one hundred dollars, to be collected as other fines are collected.

167. The said Court is directed to alter and correct the account of any person who may have disposed of or acquired any property since the last assessment, or whose property, or any part thereof, may have been omitted, if the report of such disposition, acquisition or omission be supplied by satisfactory evidence; and if real estate or other property shall, from any cause, have increased or decreased in value since the last assessment, the said Court shall correct and alter the assessment of the same, so as to conform to its present value, provided that any party desiring to apply to the Appeal Tax Court for a revaluation of any real or personal property, shall make such application before the first day of September, in order to be acted on so as to take effect for the ensuing year. The Appeal Tax Court shall not receive or act upon any such application made after the first day of September in any year, so as to affect the assessment for the ensuing year.

171. In the year eighteen hundred and ninety-eight, and in all succeeding years thereafter, the valuation of the property subject to taxation in the City of Baltimore, as it shall appear upon the assessment books of said Court on the first day of October in each and every year, shall be final and conclusive, and constitute the basis upon which taxes for the next ensuing fiscal year shall be assessed and levied; provided that the foregoing provision shall not apply to property in the City liable to taxation, and which may have escaped or which may have been omitted in the regular course of valuation, but such property shall be valued and assessed and the owner or owners thereof charged with current taxes and back taxes, not exceeding four years,

justly due thereon, whenever the same may be discovered and placed upon the assessment books; and the annual levy for each and every year shall be deemed and taken to have covered and embraced all property which was not assessed, but which ought to have been assessed, for the year for which any such levy was made. The said Court shall, on the first day of October, or as soon thereafter as practicable, in the year nineteen hundred and fourteen, and in all succeeding years thereafter make out and deliver to the City Collector a statement showing the valuation and assessment of all the property subject to taxation in said City, as it shall appear upon the assessment books of said Court on said first day of October; such statement shall contain a full list of all the real estate as the same has been valued and assessed by blocks, corresponding so far as may be practicable with the block numbers used in the Record Office of the Superior Court of Baltimore City, with the location and description of each piece or parcel of ground so assessed and valued, and also shall contain an alphabetical list of all persons to whom personal property has been assessed. The said statement shall be known as the taxable basis for the next ensuing fiscal year, and after the levy of taxes it shall be designated as the tax roll for said year. Further, the said Appeal Tax Court shall submit to the Board of Estimates on the first day of October, or as soon thereafter as practicable, a statement of the total valuation of the respective classes of property as shown on the annual roll submitted by the Appeal Tax Court of Baltimore to the City Collector. The said Court shall perform such other duties as may be prescribed by law or ordinances not inconsistent with this Article.

SEC. 2. *And be it further enacted*, That this Act shall take effect from the date of its passage.

EXTRACT FROM THE ACT EXEMPTING FIVE HUNDRED DOLLARS OF HOUSEHOLD FURNITURE.

ACT OF 1914, CHAPTER 467.

Beginning with and for the year 1915, and thereafter, all household furniture and effects in this state held for the household use of the owner thereof or members of his or her family shall be exempt from taxation for State and local purposes to the extent of $500 of the assessed value thereof; but nothing herein shall be construed to apply to any furniture or effects held or employed for purposes of profit or in connection with any business, profession or occupation.

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