

Gordon v. Appeal Tax Court.

be, discovered in the Indiana territory, for a term not exceeding five years.

To the 5th question we reply, that the lands containing lead mines in the districts made by the act of 1834, are not subject to pre-emption and sale under any of the existing laws of Congress.

*The foregoing answers apply also to the points upon [*133 which the judges were divided in opinion upon the bill in chancery, between the United States and the defendant Gear, except the fourth question certified in that case; and to that we reply, that digging lead ore from the lead mines upon the public lands in the United States, is such a waste as entitles the United States to a writ of injunction to restrain it.

[For the dissenting opinion of Mr. Justice MCLEAN, see App. p. 800.]

SAMUEL GORDON, PLAINTIFF IN ERROR, v. THE APPEAL TAX COURT.

JAMES CHESTON, PLAINTIFF IN ERROR, v. THE APPEAL TAX COURT.

The charter of a bank is a franchise, which is not taxable, as such, if a price has been paid for it, which the legislature accepted.¹

¹ CITED. *Home of the Friendless v. Rouse*, 8 Wall. 438; *Salt Co. v. East Saginaw*, 13 Id., 376; *Erie R'y Co. v. Pennsylvania*, 21 Id., 498.

For the case in the state court, see 5 Gill, (Md.), 231. When a certain sum or an annual charge is paid or contracted to be paid, as the consideration for the grant of a franchise, the contract is a limitation upon the taxing power, and no further tax can be imposed upon the franchise. Any tax is a substantial addition to the price paid for the use of the privilege. *Attorney General v. Bank of Charlotte*, 4 Jones, (N. C.), Eq., 287; *Minot v. P. W. & B. R. R. Co.*, 2 Abb. (U. S.), 323; s. c. 18 Wall., 206; 7 Phil. (Pa.), 555; *Mayor v. B. & O. R. R. Co.*, 6 Gill, (Md.), 288.

And where the charter stipulates that the corporation shall pay certain taxes annually in lieu of all taxes to which it would otherwise be subject, the amount of taxes cannot be subsequently increased. *State v. Auditor*,

5 Ohio St., 444; *Rose County Bank v. Lewis*, 5 Id., 447; *Farmers' Bank v. Commonwealth*, 6 Bush, (Ky.), 126; *Le Roy v. East S. C. R. W. Co.*, 18 Mich., 233; *Mechanics' Bank v. Debbolt*, 1 Ohio St., 591; s. c. 18 How., 380; *State v. Commissioners*, 8 Vr. (N. J.), 240; *State v. Commercial Bank*, 7 Ohio, 125; *Jefferson Bank v. Skelly*, 9 Ohio St., 606; s. c. 1 Black, 436; *Matheny v. Golden*, 5 Ohio St., 361. CONTRA. *Toledo Bank v. Bond*, 1 Ohio St., 622; *Exchange Bank v. Hines*, 3 Id., 1; *Sandusky Bank v. Wilbor*, 7 Ohio, 481.

A stipulation in the charter that the property of the corporation shall be exempt from taxation bars all right to assess or levy a tax thereon. *Washington University v. Rouse*, 42 Mo., 308; s. c. 8 Wall., 439.

A mere reservation in a charter of a sum to be paid annually does not contain an implied contract that no further tax shall be imposed. *State v. Retway*, 2 Jones, (N. C.), Eq., 396;

Gordon v. Appeal Tax Court.

But the corporate property of the bank is separable from the franchise, and may be taxed, unless there is a special agreement to the contrary.²

Minot v. P. W. & B. R. R. Co. 2 Abb. (U. S.), 323; *Erie R. R. Co. v. Commissioners*, 3 Brewst. (Pa.), 368; *Delaware R. R. Tax*, 7 Phil. (Pa.), 555; s. c. 18 Wall., 206; *State v. Parker*, 3 Vr. (N. J.), 426; *Evansville II. & N. R. R. Co. v. Commonwealth*, 9 Bush. (Ky.), 438; *Louisville C. & L. R. R. Co. v. Commonwealth*, 10 Id., 43.

A provision fixing the particular mode in which taxes are to be assessed does not preclude changing the mode. *State v. Hannibal & St. Joseph R. R. Co.*, 60 Mo., 143.

If there is no consideration for the exemption of the tax the clause of exemption may be repealed. *Hospital v. Philadelphia*, 24 Pa. St., 229; *Holly Springs S. & I. Co. v. Marshall*, 52 Miss., 281; *State v. County Treasurer*, 4 Rich., (S. C.), 520; *People v. Commissioners*, 47 N. Y., 501; s. c. 53 Barb., 70; *St. Louis, I. M. & S. R. Co. v. Loftin*, 30 Ark., 693; *Sandusky Bank v. Wilbor*, 7 Ohio St., 481.

When property is given to a corporation for a certain purpose and there then exists a statute enacting that property so given shall be exempt from taxation, it cannot be taxed as long as it is applied to the purpose for which it was given; for the statute is a contract with the donors under which the property was given, and no subsequent legislation can divert the right thus vested in the society. *Atwater v. Woodbridge*, 6 Conn., 223; *Osborne v. Humphrey*, 7 Id., 335; *Landon v. Litchfield*, 11 Id., 251; *Seymour v. Hartford*, 21 Id., 481; *Parker v. Redfield*, 10 Id., 490. CONTRA. *Herrick v. Randolph*, 13 Vt., 525; *Brainerd v. Colchester*, 31 Conn., 407; *Lord v. Litchfield*, 36 Id., 116.

If a tax is to be levied only upon the happening of a certain event, no tax can be levied prior to that time. *McGavish v. State*, 5 Vr. (N. J.), 509.

An exemption of the capital of the corporation extends to additional capital, although increased under subsequent vote. *State v. N. & W. R. R. Co.*, 30 Conn., 290.

In Missouri it is said that an exemption from state tax is not an exemption from municipal tax. *Paris v. Farmers' Bank*, 30 Mo., 575; *Pacific*

R. R. Co. v. Cass, 53 Id., 17; *Livingston v. H. & St. J. R. R. Co.*, 60 Id., 516; *Lexington v. Ault*, 30 Id., 480; but in New Jersey and Mississippi it is held that the state cannot authorize a municipality to levy a tax it cannot itself levy. *Camden & Amboy R. R. Co. v. Hillegas*, 3 Harr. (N. J.), 11; *Same v. Commissioners*, Id., 71; *O'Donnell v. Bailey*, 24 Miss., 386; so in Virginia, *City of Richmond v. R. & D. R. R. Co.*, 21 Gratt., 604; and in Maryland, *Mayor v. B. & O. R. R. Co.*, 6 Gill, 288; and North Carolina, *Bank of Cape Fear v. Edwards*, 5 Ired., 516; and in South Carolina, *State Bank v. Charleston*, 3 Rich., 342.

² DISAPPROVED in dissenting opinion. *State Bank of Ohio v. Knapp*, 16 How., 401, (see *Ibid.*, 336). CITED. *West River Bridge Co. v. Diaz*, 6 How., 542.

When the charter exempts property used for the actual and necessary purposes of the corporation, a tax may be levied upon land leased to others, which is not used for the purposes of the corporation. *State v. Love*, 8 Vr. (N. J.), 60; but if used conjointly with others, it cannot be. *State v. Betts*, 4 Zab. (N. J.), 555. If conveyed with a reservation of annual rent, the property conveyed is taxable. *New Haven v. Sheffield*, 30 Conn., 160; *Brainerd v. Colchester*, 31 Id., 407; *Lord v. Litchfield*, 36 Id., 116.

The exemption of the property of a corporation includes all which is obviously appropriate and convenient to carry the franchise granted into effect. *State v. Hancock*, 6 Vr. (N. J.), 557; s. c. 4 Id., 315; *State v. Woodruff*, 7 Vr. (N. J.), 94; but only to these purposes, *State v. Newark*, 2 Dutch. (N. J.), 519; s. c. 1 Id., 315; *Cook v. State*, 4 Vr. (N. J.), 474; *State v. Collector*, 9 Vr. (N. J.), 270; *State v. Collector*, 7 Vr. (N. J.), 519; *State v. Powers*, 4 Zab. (N. J.), 400; *State v. Blundell*, Id., 402; *State v. Flavell*, Id., 370; *Vermont Central R. R. Co. v. Burlington*, 28 Vt., 193; *State v. Georgia R. R. & B. Co.*, 54 Ga., 423.

The corporation may accept and reject a part of the exemption, *State v. Commissioners*, 8 Vr. (N. J.), 240.

A renewal of the charter does not

Gordon v. Appeal Tax Court.

The legislature of Maryland, in 1821, continued the charters of several banks to 1845, upon condition, that they would make a road and pay a school tax. This would have exempted their franchise, but not their property, from taxation.

But another clause in the law provided, that upon any of the aforesaid banks accepting of and complying with the terms and conditions of the act, the faith of the state was pledged not to impose any further tax or burden upon them during the continuance of their charters under the act.

This was a contract relating to something beyond the franchise, and exempted the stockholders from a tax levied upon them as individuals, according to the amount of their stock.³

THESE were kindred cases, brought up by writ of error from the Court of Appeals of the state of Maryland, under the 25th section of the Judiciary Act of 1789.

The first case depended upon the constitutionality of a tax imposed by the legislature of Maryland in 1841, it being alleged to be in violation of a contract made by the legislature in 1821; and the second depended upon the same circumstance, with the addition that the plaintiff in error was entitled to the benefit of the same contract, by virtue of an act of the General Assembly, passed in 1834.

The facts in the case were these;—

At November session, 1804, the legislature of Maryland incorporated the Union Bank of Maryland. Samuel Gordon,

renew the exemption unless expressly so stated. *State v. Bank*, 2 Houst. (Del.), 99.

Exempting the corporation does not exempt its bonds. *State v. Bronin*, 3 Zab. (N. J.), 484; but the shares of the stockholders are exempt, *Id.*; *State v. Powers*, 4 Zab. (N. J.), 400; *State v. Bentley*, 3 *Id.*, 532. So it has been held that if the stock is exempt the property of the company is also. *Ordinary v. Central R. R. Co.*, 40 Ga., 646; *New Haven v. City Bank*, 31 Conn., 106; *Tax Cases*, 12 Gill & J. (Md.), 117; but not the dividends, *State v. Petway*, 2 Jones (N. C.) Eq., 396.

In *Municipality v. Commercial Bank*, 5 Rob. (La.), 151, it is held that the exemption of the capital does not exempt the company's property. But exempting the corporation from taxation also exempts its property as well as its franchises. *Camden & Amboy R. R. Co. v. Commissioners*, 3 Harr. (N. J.), 71; even a so called privilege tax, *Grand Gulf & P. B. R. Co. v. Buck*, 53 Miss., 246. If the land is exempt the buildings erected upon it are exempt. *Osborne v. Humphrey*, 7 Conn., 335.

An exemption from taxation exempts the corporation from assessments for damages and expenses in opening streets assessed without regard to benefits. *State v. Newark*, 8 Vr. (N. J.), 185; see *St. Paul & Pac. R. R. Co. v. St. Paul*, 21 Minn., 526. But it has been held that the exemption from taxation and assessments does not apply to assessments of benefits for opening streets. *State Home Society v. Mayor*, 6 Vr. (N. J.), 157; *City v. Society*, 4 Zab. (N. J.), 385; *Mayor v. Proprietors*, 7 Md., 517; *Sheehan v. Good Samaritan Hospital*, 50 Mo., 155.

When the stock is exempt from taxation, no tax can be levied on a branch road which the corporation legally builds. See *Hewitt v. New York & Oswego Midland R. R. Co.*, 12 Blatchf., 452.

³ APPLIED. *Jefferson Branch Bank v. Skelly*, 1 Black, 446. FOLLOWED. *Ohio Life Ins. &c. Co. v. Debolt*, 16 How., 429; *Farrington v. Tennessee*, 5 Otto, 690. NOT IN CONFLICT. *People v. The Commissioners*, 4 Wall., 259. CITED. *Planters' Bank v. Sharp*, 6 How., 332.

the plaintiff in error in the first case, was, at the institution of the suit below, a stockholder in this bank. No bonus was required to be paid to the state, but five thousand shares were reserved for the use and benefit of the state of Maryland, to be subscribed for by the state, when desired by the legislature thereof. The charter was to last until 1816.

At the session of 1812, the legislature passed an act, entitled "An act to incorporate a company to make a turnpike *134] road leading to Cumberland, and for the extension of the charters of the several *banks in this state, and for other purposes." It proposed to extend the charters of the banks to 1835, upon condition, that they would subscribe for as much stock as would raise a fund necessary and sufficient to finish and complete the road, and upon the further condition, should bind themselves to pay into the Treasury the sum of \$20,000 for each and every year that the charters should continue; the fund being pledged for the support of common schools.

The 12th section was as follows:

"That upon any of the banks in this state complying with the conditions of this act, the faith of the state is hereby pledged not to impose any further tax or bonus on the said banks during the continuation of their charters under this act."

This act was not accepted by any of the banks.

At the session of 1813, the legislature passed another act, which was entitled a supplement to the foregoing. The 1st section incorporated a company to make the road. The second was as follows: "And for the purpose of raising a fund to make and complete said road: Be it enacted, That the charters of the several banks, &c., shall be, and they are hereby continued and extended to the 1st day of January, 1835, and to the end of the session of the General Assembly next thereafter, upon condition of the said several banks subscribing, in proportion to their respective capitals actually paid in at the time of such subscriptions, for as much stock as is necessary and sufficient to finish and complete said road," &c., &c.

The 7th section enacted, that every bank should pay annually into the Treasury the sum of twenty cents on every hundred dollars of the capital stock actually paid in; and if this were neglected for six months after it was due, the bank so neglecting should forfeit its charter.

The 8th section continued the charters of such banks as complied with the act until 1835.

The 11th section ran thus: "That upon any of the afore-said banks accepting of and complying with the terms and

Gordon v. Appeal Tax Court.

conditions of this act, the faith of the state is hereby pledged not to impose any further tax or burden upon them during the continuance of their charters under this act; and in case of the acceptance of and compliance with the provisions of this act by the several banks hereby required to make the aforementioned road, the faith of the state is further solemnly pledged to the several existing banks in the city of Baltimore, not to grant a charter of incorporation to any other banking institution to be established in the city or precincts of Baltimore before the 1st day of January, 1835."

At the session of 1815, an act was passed, "declaring the continuation and extension of the charters of the several banks therein mentioned." It recited, that several banks, and amongst them the Union Bank, had accepted the act of 1813, and then declared, that their charters were extended to 1835.

*At the session of 1821, another act was passed, entitled "An act to incorporate a company to make a [*135 turnpike road from Boonsborough to Hagerstown, and for the extension of the charters of the several banks in the city of Baltimore, and for other purposes." The preamble was as follows: "Whereas it is to the interest of the state that a turnpike road should be made, leading from Boonsborough to Hagerstown, in Washington county, and it is represented to the legislature, that the banks hereinafter mentioned are willing to make the same, if an extension of their several charters be granted to them, as they were heretofore extended by an act entitled a supplement to the act entitled, an act to incorporate a company to make a turnpike road, leading to Cumberland, and for the extension of the charters of the several banks in the city of Baltimore, and for other purposes, passed at December session, 1813: Therefore, Be it enacted," &c.

The 1st section incorporated a company to make the road.

The 2d section was as follows: "And for the purpose of raising a fund to make and complete said road, Be it enacted, That the charters of the several banks aforesaid shall be, and they are hereby, continued and extended to the 1st day of January, 1845, upon condition of the said several banks subscribing, in proportion to their respective capitals actually paid in at the time of such subscriptions, for as much stock as is necessary and sufficient to finish and complete said road," &c.

The 6th section was as follows: "That if the said company shall not commence the making of the said turnpike road within two years from the passage of this act, and shall not complete the same in four years thereafter, the right of the said company to the said road shall revert to the state of Mary-

Gordon v. Appeal Tax Court.

land, and the charters of the said banks are hereby declared not to be continued or extended by virtue of this act."

The 7th section enacted, that the banks should annually pay to the treasurer the sum of twenty cents on every hundred dollars of the capital stock of each bank actually paid in; and in case of neglect, the bank was to forfeit its charter.

The 8th section renewed and continued the charters of the complying banks until 1845, and the session of the General Assembly next thereafter.

The 11th section was as follows: "That upon any of the aforesaid banks accepting of and complying with the terms and conditions of this act, the faith of the state is hereby pledged not to impose any further tax or burden upon them during the continuance of their charters under this act; and in case of the acceptance of and compliance with the provisions of this act by the several banks hereby required to make the aforementioned road, the faith of the state is further pledged, to the aforesaid banks in the city of Baltimore, not to grant a charter of incorporation to any other banking institution to be established in the city or precincts of Baltimore *136] before the 1st day of January, 1845."

*The 12th section was as follows: "That the said banks, specified in the 7th section of this act, should they elect so to do, shall be, and they are hereby, exempt from the payment of the annual tax hereby imposed, upon condition of their paying to the treasurer of the Western Shore of Maryland, on or before the 1st day of January, 1823, the sum of \$100,000, to be appropriated in the manner herein before provided for."

The Union Bank, as was admitted in the court below, duly accepted and complied with the terms and conditions of this act of 1821.

At the session of the legislature of December, 1834, an act was passed (chap. 274) to "extend the charters of several banks in the city of Baltimore," by which, amongst other enactments, the charter of the Union Bank was extended to the end of the year 1859. It introduced some new provisions into the charter, required the payment of the school tax and a proportionate share of \$75,000; but contained no stipulation like that of the 11th section of the act of 1821.

At the session of December, 1835, the Farmers' and Planters' Bank was incorporated. It was required to pay a bonus and school tax, but the charter contained no exemption from taxation.

At the same session, viz., December, 1835, an act (chap. 142) was passed, reciting that whereas, by the 11th section of

Gordon v. Appeal Tax Court.

the act of 1821, the faith of the state was pledged not to impose any further tax or burden upon certain banks, and it was equitable that other banks should stand on equal footing, and enacting that the faith of the state was pledged not to impose any further or other tax on banks incorporated since the year 1821 than might be imposed on the banks which had complied with the terms of that act.

The 3d section was as follows: "And be it enacted, That in the said act of 1821, it was not, nor is it now, the intention of the General Assembly of Maryland, to exempt from taxation and equitable contribution to the common burdens for state purposes, the property, stock, or dividends severally held in or derived from any bank in this state, by any person or persons whatever; but that the true intent and meaning of the pledge given by the said act of Assembly was, to limit the taxation upon the franchises only of the banks therein mentioned."

In April, 1841, an act was passed "for the general valuation and assessment of property in this state, and to provide a tax to pay the debts of the state." It directed, amongst other things, that "all stocks or shares owned by residents of this state in any bank, institution, or company incorporated in any other state or territory: all stocks or shares in any bank, institution, or company incorporated by this state," &c., should be assessed, and a tax imposed upon this and all other species of property, of twenty cents, or one-fifth of one per cent. on every hundred dollars of assessable property. It also provided for an Appeal Tax Court, whose decisions should be carried to the Court of Appeals.

*In the trial of the cause in the Court of Appeals, [*137 the following agreement was filed:—

"It is agreed, that the appellant banks, to wit, the Union Bank of Maryland, the Bank of Baltimore, the Mechanics' Bank of Baltimore, the Commercial and Farmers' Bank of Baltimore, the Marine Bank of Baltimore, and the Farmers' and Merchants' Bank of Baltimore, commonly called the old banks, were chartered previous to the year 1821; and that the new banks, to wit, the Merchants' Bank of Baltimore, the Farmers' and Planters' Bank of Baltimore, the Citizens' Bank of Baltimore, and the Western Bank of Baltimore, were chartered since the year 1830; the respective periods of the incorporation of all the foregoing banks appearing by reference to their charters.

"It is admitted, that the old banks have duly accepted and complied with the terms and conditions of the act of 1821, chap. 131, the manner of which acceptance appears by the

Gordon v. Appeal Tax Court.

paper marked A, herewith filed; and have also accepted and complied with the provisions of the act of 1834, chap. 274: and it is also admitted, that taxes have always, since the incorporation of said banks, been levied and assessed upon their real and personal property in all the cities and counties of this state, in the same manner as upon property of the same kind belonging to individuals, and that said taxes have always been paid by said banks up to this time. And it is further admitted, that said banks did not, at the time of the enactment of the act of 1841, chap. 23, nor have they at any time since, paid or redeemed their notes or other obligations in specie."

The Court of Appeals decided, that the tax imposed by the act of 1841 was not a violation of the contract between the state and the banks, which was effected under the act of 1821, and to review this opinion the writ of error was brought.

Meredith and Dulany, for the plaintiffs in error.

Nelson, attorney-general, and *Steele*, for the defendants.

In the case of Samuel Gordon, the counsel for the plaintiff in error contended,

1. That the Union Bank of Maryland having accepted of and complied with the terms and conditions of the act of 1821, chap. 131, a contract was created by the 11th section thereof, on the part of the state, "not to impose any further tax or burden upon said bank during the continuance of its charter under the 8th section of said act;" and that this exemption from taxation extended to all the property of said bank, real and personal.

2. That the 1st and 45th sections of the act of 1841, chap. 23, imposed upon the said bank "a further tax and burden," in violation of the said contract, and was therefore void as against the provisions of the Constitution of the United States.

And in the case of *James Cheston*, plaintiff in error, *138] v. *The Appeal Tax Court*, who was a stockholder in the Farmers' and Planters' Bank of Baltimore, one of the new banks chartered since 1830, the counsel for said Cheston contended,

That if the aforesaid assessment law of 1841, so far as it imposes a further tax upon the stockholders of the old banks, should be declared void for its repugnance to the Constitution of the United States, then, that it is equally void, so far as it imposes an additional tax upon James Cheston, a stockholder of one of the new banks, as it thereby deprives the new banks of the immunity from further taxation granted to them by the

Gordon v. Appeal Tax Court.

1st section of the act of 1835, chap. 142, which immunity is itself a franchise, granted for a valuable consideration, and cannot, therefore, be taken away.

Dulany, for the plaintiffs in error, said, that he would not stop to cite authorities to show, that the law was void, if it impaired the obligation of a contract, but would refer to two cases which were analogous to the present: 7 Cranch, 154; 4 Peters, 561.

He then entered into a detailed examination of the charter of the Union Bank with its several supplements, and asked the court to compare the 11th section of the act of 1821 with the act of 1841, and he thought it would be found, that the latter took away what the former gave. It was admitted, that there was an exemption of some kind in the act of 1821, and the only question in the case was, what kind of exemption was it?

In *Dwarris on Statutes*, 51, 9 Law Library, it was said, that every word of a statute must have its effect; that it was better to observe what the legislature said than what they are supposed to have meant. Apply this to the paragraph, coupled with the doctrine that in Maryland property is not taxed, but persons are. 1 Maxcy's Laws, 12, Declaration of Rights, article 13, shows this. The exemption was then a pledge given to a person, viz., the bank. Why should it be limited, as contended for by the opposite side, to an exoneration of the franchise merely from taxation? The construction ought to be in favor of the banks, because it was the intention of the legislature to invite them to accept the law. If you narrow it down now, it is not the spirit in which the offer was made. It is easy to see what that spirit was. The two objects of promoting internal improvement and fostering public schools were great public objects, and it was very desirable to encourage them without resorting to direct taxation. The banks were the invited party, and the act was to be laid before the stockholders for approval or rejection. Of course, the terms would be closely looked at. The proposition was, that no "further" tax should be imposed. The word "further" refers to the preceding section, in which the tax for the road and schools is provided. It is true, that the act of 1841 imposed a tax upon the property; but the tax for road and schools fell upon the very same property, and, as it happened, was of just the same amount. A further tax of the same character [*139] was meant. The object to which the money is to be applied makes no difference in the character of the tax. The clause is clear in itself, and we are not to look to the preamble, as a guide to intention, unless there is some ambiguity. *Dwarris*

Gordon v. Appeal Tax Court.

on Stat., 19. And if we look to the preamble, it will not enlighten us, because it only refers to the road, without saying any thing about schools. If the exemption related only to the franchise, it was worth nothing, because whether the tax should be laid on the franchise or the property of the bank, the same people would pay it in either case. The legislature could have derived the same amount by taxing property as if they taxed the franchise; and to hold, that they were at liberty to do so, of course, renders the exemption of the franchise worthless. There are two decisions upon similar words: 2 Harr. (Ky.), 78, 79, 80; 7 Dana (Ky.), 342.

True, the banks have heretofore paid taxes upon their real property, but the amount was trifling, and the stock was not taxed as now. Besides, their consent does not furnish a rule by which we are to construe the law.

It is said, on the other side, that the contract of exemption was made with the bank and not the stockholders; and by the act of 1841 only the latter are taxed. But what is a corporation? Only the union of certain persons, with power to sue, &c. 4 Pet., 552; Angell & Ames on Corp. 1, 3, 5.

The name is only the legislative baptism of the stockholders. Natural persons are the substratum of the corporation; they receive all its benefits. They pay the taxes, and yet we are told, that a contract for the benefit of the corporation does not reach them. They were the persons who accepted the law in a general meeting, and not the bank, acting as a corporation. What is the difference between taxing them in the gross and taxing them individually?

As to the *case of Cheston*. He is a stockholder of the Farmers' and Planters' Bank, one of what are called the new banks, chartered in 1836. The act of March, 1836, chap. 142, puts these on the same footing with the old banks. The 3d section, it is true, says that the exemption relates only to franchises; but the legislature had no right to deprive, by law, the banks of a benefit which they had already acquired under a contract. And the words "without violation," &c., show that the legislature did not intend to take away any such benefit.

The tax of 1841 clashes with the exemption. It is laid on every thing which constitutes the property of the bank, because in a schedule every thing, even the franchise, goes to make up the aggregate value of the stock, and the tax is laid on the cash value of the stock. By the 17th section, the assessors are directed to value it at the market price. But the market price is governed by the value of all the different species of property held by the bank, including even the franchise, because a purchaser looks at all these, when about to

Gordon v. Appeal Tax Court.

*invest. It is impossible to separate that portion of the tax which falls upon the franchise, and as the legislature has covered the whole, the entire tax must fall.

Steele, for the defendants in error, contended,

1. That the contract between the State of Maryland and the Union Bank of Maryland, created by the act of 1821, chap. 131, and continued by the act of 1834, chap. 274, exempted from taxation, not the property of said bank, nor the shares of its stock in the hands of individual stockholders, but its corporate franchises, and their exercise during the continuance of its charter.

2. That the tax imposed by the act of 1841, chap. 23, being a tax upon the shares of stock owned by individual stockholders, was not a violation of the contract between the state and the bank, and was, therefore, not unconstitutional.

In the case of *James Cheston*, a tax was imposed and assessed under the same act of 1841, chap. 23, on the shares of stock owned by the plaintiff in error in the Farmers' and Planters' Bank of Baltimore—a bank chartered since 1830, and not included in the provisions of the act of 1821, chap. 131, and the act of 1834, chap. 274.

In this case, the counsel for the defendant in error contended,

That the plaintiff in error was entitled to no immunity from taxation upon his shares of stock in said Farmers' and Planters' Bank of Baltimore, either under the acts of Assembly, herein before mentioned, or under the act of 1835, chap. 142.

Mr. *Steele* said, the Appeal Tax Court is the nominal defendant only; the real one is the state of Maryland. The act of 1841, chap. 33, is a general tax upon all property; not on banks alone, but every species of property. The Court of Appeals decided that it did not conflict with the act of 1821. Is it not a rule that this court will adopt a state's construction of its own laws?

In this case it is not correct to construe the contract favorably to the banks. On the contrary, the rule is to construe strictly any provision which imposes a limit upon the taxing power. 4 Pet., 503, *Prov. Bank v. Billings*. 11 Pet., 546—548, carries the rule still further.

Such a rule is necessary to protect the community from improvident legislation. Another rule is, that where there are two constructions, that one is adopted which will produce the least injury. It has been said that our construction, exempting franchises only, renders the whole nugatory, because the franchises would have been safe from taxation without such

exemption. But not so. Being the creatures of law, they are peculiarly appropriate for the taxing power. 4 Wheat., 699; 12 Mass., 252; 4 Pet., 526.

A charter makes a bank a person to carry on a business; but it must be carried on in the same way that other persons *141] do. Suppose a pre-existing law had taxed banks, would a subsequent charter have *been exempt? No—because the laws would not conflict with each other. Nor do they conflict when the charter is passed first.

It has been said that the exemption is clear. But the section itself refers to the preceding part of the law, and the legislature, twice, in 1835 and 1841, put the same construction on it as we do. The 7th section and all preceding ones provide for an extension of charters. It was right to exempt the franchises, because the legislature was dealing with that subject; but why should they go beyond that, and exempt private property to an extent that they were not aware of? The state was not in want of money, nor was there a motive in the banks to purchase such an exemption as that contended for. No one then anticipated what has since come to pass. Taxes were light, and always paid. The act of 1813 contains the same clause, when there did not exist any system of taxation. Up to 1841, the state had never taxed bank stock or choses in action, and the taxes upon real or other property did not amount to the fourth part of 20 cents. A proposition, therefore, to exempt stock which had never been taxed at all, upon the payment of four times the amount which other property paid, would have been considered a strange one. The tax of 20 cents must have been imposed upon the franchise. The compensation for extending the charters was that the banks would make the road, and for future exemption of the franchise was that they should pay 20 cents towards the school fund. The word “further” means another tax like that one; and if the tax imposed was upon the franchise, a further one upon the same thing was all that was intended to be prohibited.

Look at the cotemporaneous exposition of the law by both parties. County and city taxes were paid by the banks; and not only so, but a small state tax, levied in 1822 upon real property, was paid by them also. Other banks were incorporated in 1833, 1834, and 1835, which pay the 20 cents without any thing being granted except the charter. The act of 1835 gives the new banks an exemption upon the franchise, and nothing more. In the case in 2 Harr. (Ky.), the words were “further or other tax.” Exemptions have been strictly construed. 11 Johns. (N. Y.), 77; 8 T. R., 416. The penalty for not paying the 20 cents, shows upon what the tax was

Gordon v. Appeal Tax Court.

imposed, for it provides that the charter shall cease if the tax is not paid. It was therefore a bonus for the charter.

But suppose that the contract was made as contended for by the other side. By their own showing, it was made with the bank as a person, and the individual stockholders cannot avail themselves of it. If the corporation were to purchase a house, one of the members could not claim an interest in the purchase. They have an interest which is distinct from that of the corporation, because they may sue it, or sue each other. If the contract here be not to tax the bank, it is not equivalent to an agreement not to tax the stockholders. The difference is shown by supposing the tax to be laid before [*142 the bank *commenced operations, and laid afterwards. In the first case it would diminish the capital of the bank, but in the latter it would not. If the individual stockholders can claim the benefit of the exemption, they must also be liable to the state for the payment of the tax which is the price of the exemption. But if Samuel Gordon were sued for the 20 cents stipulated in the act, no one can suppose that he would be bound to pay it. The difference between taxing banks and stockholders is shown in 1 Nott & McC. (S. C.), 527; 4 Wheat., 436; 2 Pet., 459; 2 Bay (S. C.), 654, 672, 683.

Who pays the tax of 1841? If the bank does not, there is no violation of the contract with the bank, and the bank does not, in fact, pay it.

As to *Cheston's case* and the new banks, it has been said that they are on the same footing as the old. The best reply to this is to read the law. The legislature expressly say, that they intend to exempt only the franchises.

Nelson, attorney-general, on same side.

There are two propositions to be examined:

1. The nature of the contract of 1821.
2. Whether the act of 1821 was in force at all in 1841.

1. We admit there was a contract in 1821, and that it is protected by this court. But what is its nature and extent? The original charter of the Union Bank contained no exemption, and, therefore, according to the doctrine in the *Providence Bank v. Billings*, the state could tax it. The charter was passed in 1804, and contained no clause imposing a school-tax. But this might have been imposed at any time after the charter, without asking the consent of the bank. The only point upon which the assent of the bank was required, in any subsequent legislation, was that its charter should be continued. It was to expire in 1816. In 1812 an act was passed proposing to extend the charter on certain conditions, but

 Gordon v. Appeal Tax Court.

these were not accepted. In 1813 another act was passed extending the charter to 1st January, 1835, which was accepted.

(Mr. *Nelson* here went into a detailed examination of the several acts.) All the acts show that the legislature had in view the making of the road, and the banks the extension of their charters. The pledge not to incorporate any other banks shows that it was only the franchise which was intended to be protected. The contract was made with the banks as such. They were the contracting party in their corporate capacity. What does the act of 1841 do? It imposes no tax on the capital stock of any bank, but on individual interests. No bank is plaintiff in error here, complaining of a violated contract. The 9th section of the act directs the mode of making the assessment, which was upon the stock in the hands of *143] individuals at its cash value. But this is not the same with its *nominal value, which would have been the guide if the bank had been taxed. As laid, it is nothing more than an income tax, and cannot a legislature lay that without regard to the source from which revenue comes? The distinction between a tax upon a bank, as such, and a tax upon its property, is clearly recognized in the case of *McCulloch v. State of Maryland*, where the court say that one may be taxed but not the other. The identity between a bank and its stockholders is shown not to exist, when we consider that the bank, as a corporation, could not become one of its own stockholders. Application had to be made to the legislature for permission for the bank to purchase its own stock. It is true, as said on the other side, that the act of 1821 was accepted by the stockholders in general meeting, but this was a corporate act, and not one proceeding from individual interests. If it had been the latter, whence would the majority have derived the right to bind the minority?

2. The act of 1834, chap. 274, was accepted by the Union Bank, and by virtue of it the charter was extended to 1859. The acceptance of this new law is a merger of the old, and in the new there is no limitation of the power to tax.

Meredith, for plaintiffs in error, in reply and conclusion.
Let us inquire,

1. What was the nature and character of the contract?
2. Has it been impaired?

Mr. *Meredith* reviewed the charter of the Union Bank and its supplements, and said, that in 1821, some years before the charter was to expire, the legislature was desirous of making a road. It was a fact of universal notoriety that turnpike roads were not profitable. Individuals could not be persuaded

to subscribe and make this one. The cost to the Union Bank was \$161,000, nearly ten per cent. upon a capital of \$1,800,000. It is conceded that for this the state has relinquished a portion of the power of taxation; but then it is said to be only a partial exemption. We agree that to make out a total exemption, the language must be so strong as to leave no reasonable doubt; and we say it is so. What are the words? "Not to impose any further tax or burden on the banks." There are two important words: "any" and "further." What is the meaning of "any?" In its popular acceptance it would include all kinds of taxes in whatever form they might be laid. According to lexicographers, the word is of unusual and indefinite signification. "Any" tax must mean "every tax," of every nature or description whatsoever. Then, there is the word "further," which refers to something which has been done before and additional. The other side wish to limit the meaning to an addition of the same nature; but no dictionary or example can be found to justify this restriction.

*(Mr. *Meredith* here read from Richardson's Dictionary, title *Further*.) The two words together are as [*144 comprehensive as language could be used. They are quite as strong as those used in 2 Harrison. In the act of 1835, when the legislature intended to put the new banks upon a footing with the old, they say "further or other" in the 3d section. In a preceding section, the words are the same as those in 1821, which shows that they were supposed to be equivalent. The case cited from 11 Johnson was not that of a tax; it was an assessment for opening a street; and the case in 8 T. R., was decided on two grounds: 1. That the property did not belong to the occupier, and 2. That the statute had been repealed. Neither case is in point. In South Carolina, seven out of eight banks are exempted under a clause exempting banks from taxation. The case in Nott & McCord, decided that words of exemption did not extend to the franchise only, but all taxation.

If the words of a statute are plain and definite, it is dangerous to depart, &c. Dwaris on Stat., 3 Law Lib., 48.

If the construction of the other side be given to the act of 1821, the 11th section is of no use; because without it the franchise would have been safe from taxation. In the cases of 12 Mass. and 4 Peters, the right was maintained, it is true, to impose a tax on existing banks, but in neither case was there a relinquishment of the taxing power, express or implied, except from the mere granting of the charter. We may concede the authority of both. But here the banks paid a high

Gordon v. Appeal Tax Court.

price for their renewed charters, and the legislature could not have taxed the franchise any further. If so, the operation of the 11th section must be extended beyond the franchise.

(Mr. *Meredith* then entered into a critical examination of the acts of 1812 and 1813, and argued that the first act was not accepted, because it did not go as far in protecting the banks as that of 1813; and that the latter would have been rejected if it had not been supposed to exempt them entirely from taxation.)

Mr. Justice WAYNE delivered the opinion of the court.

The question raised in this case by the agreed statement of facts upon the record, is, Does the act of Maryland of 1841, chap. 23, so far as it imposes a tax upon the shares of stock held by stockholders in the Union Bank of Maryland and the other banks mentioned in the statement, impair the obligation of a contract?

The banks are classified in that statement as the old and the new banks. The old are those which were chartered previous to the year 1821; the new, those which were chartered after the year 1830.

Their exemption from the tax imposed by the act of 1841 is claimed under the acts of Maryland of 1821, chap. 131, and that of the 19th March, 1835, chap. 274, called the act of *145] the session of 1834.

*It is admitted that the old banks accepted and have complied with the terms and conditions of the act of 1821; that they also accepted and have complied with the provisions of 1834; and that taxes have always, since the incorporation of the banks, been assessed and levied upon their real and personal property in all the cities and counties of the state, in the same manner as upon property of the same kind belonging to individuals, and that they have always been paid by the banks up to this time.

The question, however, which this court is called upon to decide, and to which our decision will be confined, is, Are the shareholders in the old and the new banks liable to be taxed, under the act of 1841, on account of the stock which they own in the banks?

The statement given by the reporter of the acts of the legislature of Maryland, by which the charters of the banks have been extended at different times, makes it unnecessary to refer to them in detail here.

Are the old banks in Baltimore and their stockholders exempted from further taxation during the continuance of their charters under the act of 1821, chap. 131, by force of the

Gordon v. Appeal Tax Court.

11th section of that act? Can the old banks, after the year 1845, the time to which their charters were extended by the act of 1821, and the new banks, claim any exemption from taxation under the act of 1834, chap. 274, unless it be a tax upon their franchise of banking?

It appears, from the acts of 1812, 1813, and 1821, that the legislatures which passed them had in view the construction of the Cumberland and Boonsborough turnpike roads, and the establishment of a school fund. That they designed to accomplish those objects by making some of the banks construct the roads, and all of them contributors to the school fund, as the price for their charters. A round sum, or an annual charge, with or without reference to capital stock, may be asked by a legislature for such a franchise. It may be more convenient to the banks to have such a consideration or bonus distributed through the years of their corporate existence, than to pay its equivalent in advance. This option was given to the old banks. Being so given, it is conclusive that the legislature intended the annual tax or charge upon the capital stocks of the banks to be the bonus or price, or part of the price as to some of them, that they were to pay for the prolongation of their franchise of banking. When the banks accepted the acts, by choosing to pay the annual charge instead of the stipulated alternative, it is plain: that they thought so too, and that they understood in that way the contract between themselves and the state. Either was a condition, to be accepted and complied with before the charters were to be extended. Such a contract is a limitation upon the taxing power of the legislature making it, and upon succeeding legislatures, to impose any further tax upon the franchise. But why, when bought, as it becomes property, may it not be taxed, as land is taxed which has *been bought from the state, [*146 was repeatedly asked in the course of the argument? The reason is, that every one buys land, subject in his own apprehension to the great law of necessity, that we must contribute from it and all of our property something to maintain the state. But a franchise for banking, when bought, the price is paid for the use of the privilege whilst it lasts, and any tax upon it would substantially be an addition to the price.¹ But whether the bonus for the franchise is paid by an annual tax upon the capital stock, or in any other way, it is in the discretion of the legislature to tax the capital stock as an aggregate, according to its actual value, or the stockholders on account of their

¹ CONSIDERED OBITER. *Minot v. Philadelphia, &c., R. R. Co.*, 2 Abb. (U. S.), 337.

separate ownership of it, or the dividends in the aggregate, or the stockholders on account of their portions of them. The limitation and the power to tax, as both have been just expressed, was substantially conceded by counsel on both sides of this cause. We did not understand the counsel for the appellants as contending, that the shareholders in the old banks were exempted from the tax imposed upon them on account of their stock, except by the force of the 11th section of the act of 1821. Their argument was, though the franchise might be taxed separate from the stock of a bank, whether the annual tax paid by the banks upon their capital stock was a tax upon their franchises or not, that the banks were exempted from further taxation; the old banks by force of the 11th section of the statute of 1821, and all of the banks in Baltimore by force of the act of 1834. The argument of the counsel for the defendant in error was, that the annual tax paid by the banks was a tax upon their franchises, and that the 11th section did not give to the stockholders any exemption from being taxed as persons on account of their stock. Whether or not the exemption given by that section is extended to the old and the new banks in virtue of the act of 1834, is another question, to which a separate answer must be given in the course of this opinion.

Has such an exemption been given to the old banks? The language of the 11th section of the act of 1821 is: "And be it enacted, That, upon any of the aforesaid banks accepting and complying with the terms and conditions of this act, the faith of the state is hereby pledged not to impose any further tax or burden upon them during the continuance of their charters under this act." This is the language of grave deliberation, pledging the faith of the state for some purpose—some effectual purpose. Was that purpose the protection of the banks from what that legislature and succeeding legislatures could not do, if the banks accepted the act, or from what they might do, in the exercise of the taxing power? The terms and conditions of the act were, that the banks should construct the road and pay annually a designated charge upon their capital stocks, as the price for the prolongation of their franchise of banking. The power of the state to lay any further tax upon the franchise was exhausted. That is the contract between the state and the banks. It follows, *147] then, *as a matter of course, when the legislature go out of the contract, proposing to pledge its faith, if the banks shall accept the act, not to impose any further tax or burden upon them, that it must have meant by those words an exemption from some other tax than a further tax upon the franchise

of the banks. The latter was already provided against. To confine the pledge to any further tax upon the franchise, surrenders the whole clause as a substantive enactment, to a supposed needless declaration of the legislature, that it would not do what it had stipulated by its contract not to do. The faith of states is never pledged but for some substantial end, within the competency of their legislative power; and it is not for us to suppose that of Maryland was given in the act of 1821, with a less grave intent. "Not to impose any further tax or burden," when used in reference to some tax already imposed, means no other tax besides that to which reference is made. Those words, so used, cannot be limited by a refinement upon the etymology of the word "any," out of or beyond its meaning in common discourse, to any like; and the words "any further tax," used with relation to some other tax, will, by common consent, as it always has been, be intended to mean any additional tax besides that referred to, and not any further like tax.

Having determined that the clause in question was not meant as a pledge against further taxation upon the franchises of the banks, but that it was a pledge against additional taxation, what is the extent of exemption given by it, or to what does it apply? Does it exempt the respective capital stocks of the banks, as an aggregate, and the stockholders from being taxed as persons on account of their stock? We think it does both. The aggregate could not be taxed, without its having the same effect upon the parts, that a tax upon the parts, would have upon the whole. Besides, the legislature, in proposing the terms and conditions of the act, use the word "banks" with reference to the consent or acceptance of the act being given by the stockholders, according to a fundamental article of their charters. The acceptance of the act could only be made by the stockholders. They did accept, and the state recognised it as the act of the stockholders. It could not have been given or been recognised in any other way. True it is, when accepted and recognised, it became a contract with the banks. But its becoming a contract with the banks determines of itself nothing. We must look in what character, or by whose assent it was to become a contract with the state, to ascertain the intention of the legislature in making the pledge, "that upon any of the aforesaid banks accepting of and complying with the terms and conditions of this act, the faith of the state is hereby pledged not to impose any further tax or burden upon them during the continuance of their charters under this act."

The senses in which the words bank or banks are used,

occur every day in conversation, and are understood by every one. But *the sense in which they are intended to be used, is determined by their connection with what is said besides. When we speak of an act to be done by a bank or banks, we mean an act to be done by those who have the authority to do it. If it be an act within the franchise for banking, or the ordinary power of the bank to contract, and it is done by the president and directors, or by their agent, we say the bank did it, and every one understands what is meant. If, however, an act is to be done relative to the institution, by which its charter is to be in any way changed, the stockholders must do it, unless another mode to effect it has been provided by the charter. In one sense, but after it has been done, we may say the bank did it, but only so because what the stockholders have done, became a part of the institution, which it was not before. The act to be done in this instance was relative to the institution. The legislature knew it could only be done by the stockholders, and it uses the word banks in reference to the act being accepted by the stockholders. The act was accepted by them. When, then, the legislature says, "that upon any of the aforesaid banks accepting of and complying with the terms and conditions of this act, the faith of the state is hereby pledged not to impose any further tax or burden upon them during the continuance of their charters under this act," the relative is as broad as the antecedent, comprehending all that the latter referred to. It cannot be said, then, that the stockholders in the old banks are not exempted by the 11th section of the act of 1821 from being taxed as persons, on account of their stock in those banks, during the continuance of their charters under that act.

Such was manifestly the intention of the legislatures which passed the acts of 1813 and 1821, from their language. It is confirmed by the attendant circumstances. Each of those legislatures were anxious to have a certain road constructed, which they thought the convenience and intercourse of the citizens of Maryland required; and they were also anxious to raise an adequate school fund for every county in the state. They determined that both should be accomplished by incorporating certain banks, with the obligation upon them to make the roads, and to make all the banks in the state pay an annual tax upon their respective capitals, for a school fund, as the conditions upon which their charters were to be extended. By the act of 1813, chap. 122, every incorporated bank in the state was required to pay the annual tax of

twenty cents upon every hundred dollars of its capital stock, as the condition upon which its charter was to be extended.

When the legislature, in 1821, incorporated the Boonsborough Turnpike Company, and proposed to extend the charters of those banks which, by the terms of the act, were to subscribe for stock enough to complete the road, it renewed upon those banks the school tax which had been imposed upon them in common with the *other [*149 banks, by the act of 1813. The 11th sections in both acts are identical. In what spirit were those acts offered to the acceptance of the banks? In what spirit was it that the banks viewed and accepted these acts? It was an unusual way of providing means for the construction of turnpike roads. The tolls might turn out to be enough to compensate them for the expenditures. They might not. Though the legislature thought the construction of the roads and paying the school-fund tax were no more than an adequate price for an extended franchise, it is very certain that the stockholders may have thought, that the incorporation of the banks into turnpike companies, with an obligation upon them to withdraw so much money from their business operations as was sufficient to finish the roads, presented only a contingent possibility that they could be remunerated by tolls from the roads. When the act of 1821 was proposed, they had some experience of what had been the result of the construction of the Cumberland road. Is it not possible, then, that when the acts of 1813 and 1821 were in preparation, or as they were being enacted, that the 11th section was introduced as an inducement to the stockholders to accept those acts? Whether the tolls from the road have ever compensated the banks for the expenditure upon them, does not appear in the case. But it was natural that the stockholders, knowing as they did that a tax upon the franchises of the banks would not exempt them from other taxation, stipulated in both instances that a provision should be introduced into the acts surrendering the state's right to tax them further than they were about to be by those acts. In whatever way we examine the acts of 1813 and 1821, we are of opinion that it appears from the 11th sections in those acts, to have been the intention of the legislatures which passed them, to exempt the stockholders from taxation as persons on account of the stock which they owned in the banks. This exemption, however, is limited to the old banks in Baltimore which were chartered before 1821, during the continuance of their charter under the act of 1821. It is founded upon the 11th section of that act, and it is our opinion that the act of 1841, chap. 23, in so far as it imposes a tax upon the stock-

holders in those banks, on account of their stock, does impair the obligations of a contract, and is void by the 10th section of the 1st article of the Constitution of the United States.

The act of 1834 does not extend to the old or the new banks an exemption from the tax imposed by the act of 1841, chap. 23. It is an act to extend the charters of the several banks in Baltimore. The second section prescribes the terms upon which the franchise for banking is extended. Those terms are the payment annually of twenty per cent. upon every hundred dollars of the respective capitals of the banks, and their proportional parts of \$75,000, in two yearly instalments, computed from the passage of the act, according to the combined rates of their respective capitals paid in, *and of the time for which their charters are respectively continued beyond the first day of January, 1845.

Upon a failure of any bank to pay either the annual charge or its proportional instalment, its charter is declared null and void. The annual charge and the instalment make the bonus to be paid by each bank for its continued franchise. It was urged for the old and the new banks, that the annual tax which they were required to pay by the second section of the act of 1834 being upon their respective capitals, a tax upon the stockholders on account of their stock would be equivalent to an increase of the price which had been given for the franchise. The effect upon the stockholders would be the same, as they pay both, but that is because they agreed to pay an annual tax upon the capital stock, for their franchise, without any stipulation by the state that were not to be taxed as stockholders, on account of their stock, as was the case in the eleventh section of the act of 1821. The franchise is their corporate property, which, like any other property, would be taxable, if a price had not been paid for it, which the legislature accepted, as the consideration for allowing them to use the franchise during the continuance of their charters. The capital stock is another property—corporately associated, for the purpose of banking—but in its parts is the individual property of the stockholders in the proportions they may own them. Being their individual property, they may be taxed for it, as they may for any other property they may own. This is not only the case in Maryland. A franchise for banking is in every state of the union recognized as property. The banking capital attached to the franchise is another property, owned in its parts by persons, corporate or natural, for which they are liable to be taxed, as they are for all other property, for the support of government.

We are of opinion that the stockholders in the old banks

Searight v. Stokes et al.

are exempt from the tax imposed by the act of 1841, chapter 23, during the continuance of their charters under the act of 1821, but that the stockholders in the old and new banks are liable to be taxed by the act of 1841, or that they can claim no exemption under the act of 1834, by which their charters were further extended.

The judgment of the Court of Appeals is therefore reversed, and the cause will be remanded, with directions to enter up a judgment for the plaintiff in error.

* WILLIAM SEARIGHT, COMMISSIONER AND SUPER-INTENDENT OF THE CUMBERLAND ROAD, WITHIN [*151 THE STATE OF PENNSYLVANIA, PLAINTIFF IN ERROR, v. WILLIAM B. STOKES AND LUCIUS W. STOCKTON, WHO HAVE SURVIVED RICHARD C. STOCKTON, DEFENDANTS IN ERROR.

Under the acts of Congress ceding to Pennsylvania that part of the Cumberland road which is within that state, and the acts of Pennsylvania accepting the surrender, a carriage, whenever it is carrying the mail, must be held to be laden with the property of the United States, within the true meaning of the compact, and consequently exempted from the payment of tolls.¹

But this exemption does not apply to any other property conveyed in the same vehicle, nor to any person travelling in it, unless he is in the service of the United States and passing along in pursuance of orders from the proper authority.

Nor can the United States claim an exemption for more carriages than are necessary for the safe, speedy, and convenient conveyance of the mail.²

THIS case was brought up by writ of error from the Circuit Court of the United States for the western district of Pennsylvania, and involved the right of the plaintiff in error, acting under the authority of the state of Pennsylvania, to collect tolls from the stage-coaches which carried the mail of the United States.

The circumstances under which the question arose were these :

On the 30th of April, 1802, and 3d of March, 1803, acts of Congress were passed, the effect of both of which taken together was, that three per cent. of the amount received for

¹ In *Hopkins v. Stockton*, 2 Watts & S. (Pa.), it was decided that a toll-gate keeper upon that part of the National Road which passes through Pennsylvania, would not be justified by the act of the 13th of June, 1836, in stopping a coach carrying the United States mail, for the refusal to pay toll.

² COMPARE, *Neil v. Ohio*, post, *720, 742, 745; *Achison v. Huddleston*, 12 How., 293.