for city purposes. Manifestly, there are abundant reasons to forbid such a construction of a statute, unless compelled by the clearest terms contained in it, of an intent to work so apparent injustice. The equivalent derived by the banks, in the exercise of their franchise, and exemption from State taxation, it surely a full equivalent for any bonus they have paid.

It is not intended, on my part, to deny that the General Assembly might have relieved the banks from their liability had they thought proper, but to deny that this is the fair construction of the 11th section of the act of 1821 ch 131. We have now to consider the bearing of the 60th section of the act of 1841, ch. 23. upon this point. It is as follows:

"That from and after the present year, eighteen hundred and forty one, all county, city or district taxes shall be assessed on the property valued under the provisions of this act, anything in any other act to the contrary notwithstanding; provided, that nothing in this section shall be so construed as to subject to taxation, for county or city purposes, vessels which now pay license to the general government."

The Legislature intended, as I hold by that section, to declare what species of property might be taxed for State or City purposes, and if agreeably to that intent, the various kinds of property, inserted in the first section of that act have alone been taxed, the failure on the part of the State to obtain that object so far as the stock of the banks enumerated is concerned, under the decision of the Supreme Court recently given, denying that right for State purposes, does not also, deprive the city of the enjoyment of that power for her purposes, when she has adhered to the basis of taxation established by the State herself in that act. The only restraint she imposed upon the taxing power of the corporation of the City of Baltimore was not to change the objects or value of the assessment therein prescribed for City purposes. My reply to the first resolution might render it unnecessary to answer the second or third, inasmuch as it presumes the right to exist in the City authorities to tax the stock of the banks enumerated in the first resolution, and that consequently no necessity will arise, on the part of the Council, to consider what abatement was made upon the real and personal estate of said banks during the years 1843, '43, '44. I will, however, adopt the hypothesis assumed in the third resolution, that the tax upon

upon the stock of said banks has been improperly laid, and answer the question put in this supposed contingency. No power is given by any act of the Assembly of Maryland after an assessment once made, and the property being in the knowledge of the Assessors, and purposely omitted by them and the appeal tax court, afterwards to assess it for any purpose whatever. The exercise of the power once, is an exhaustion of that power, so far as the past is concerned; and no new assessment can be made to take effect from a former period. By the provisions of the act of 1844 ch 116. relating to the appeal tax court, they are clothed with power to include in the assessment and levy, any property previously omitted. This, of course is a right prospective in its character. I will, however, express another view of this subject. These taxes having been once paid, either voluntarily or by judgement of Court, they cannot be recovered back from the city by any action at law. The only remedy, on the part of the stockholders, was by an appeal. This remedy, I am informed, they have not adopted, so far as the tax imposed for the benefit of the City is concerned. This doctrine is established by the case of Elliot vs Swartout, 10 Peters' Supreme Court Reports. 154. The language of the report is, "in case of a voluntary payment by mere mistake of law, no action will lie to recover back the money" The construction of the law is open to both parties, and each presumed to know it."

Wherever, then, there has been a payment in to the Treasury, voluntarily or by judgement given in a court of law, as was the fact in many instances, there is no action at law, by which these taxes can be recovered. Any claim which they may possess to the repayment of taxes must be addressed to the favour of the Mayor and City Council, and not placed on the ground of legal right. And should the Councils yield, in any manner or to any extent to a petition of that character, it will be for them to define the terms.

Very respectfully
Benj. C. Presstman
Counsellor for the City of Baltimore

The Second Branch returned the bill, entitled, "A supplement to an ordinance for the measurement of charcoal," endorsed "will not pass"

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