

THE  
AMERICAN LAW REGISTER.

---

JULY, 1871.

---

TAXATION OF INTER-STATE TRAVEL.

THE Baltimore and Ohio Railroad Company has refused to pay to the state of Maryland certain sums of money, claimed by that state, upon the ground that the statutes, imposing the obligation, are unconstitutional and void, in so far as they impose the duty of making the payment referred to in those acts.

The questions involved are of general interest, and we propose to state the grounds upon which the claim of the state of Maryland has been resisted.

The Acts of the General Assembly of Maryland, which have given rise to the controversy, are as follows:—

*“ Be it enacted, &c. That the Baltimore and Ohio Railroad Company shall be entitled to charge and take as a compensation for the use of the railroad, which they are authorized to construct by this act, and for the conveyance of passengers and transportation of property thereon, at and not exceeding the following rates and amounts, to wit: for conveying any person, or transporting any parcel, or property, any distance whatever, twelve and a half cents; for conveying each person the whole distance between Baltimore and Washington, not exceeding one dollar and fifty cents, and four cents per mile for any part of the distance more than three miles.”* 1830, ch. 158, sect. 3.

*“ And be it enacted, That the Baltimore and Ohio Railroad Company shall be entitled to charge and take for conveying each person the whole distance between the cities of Baltimore and Washington, not exceeding two dollars and fifty cents, and in proportion for every shorter distance.”* 1832, ch. 175, sect. 7.

*“ And be it enacted, That the Baltimore and Ohio Railroad Company shall pay*

*to the treasurer of the Western Shore of Maryland, on the first Monday in January and July, in each and every year, for the use of the state, one-fifth of the whole amount which may be received for the transportation of passengers on said railroad by said company during the six months last preceding; and it shall be the duty of the president or chief officer of the Baltimore and Ohio Railroad Company, to exhibit, on oath or affirmation, to the General Assembly, on the first day of January, or as soon thereafter as the said Assembly shall convene, in each and every year, an account, showing the gross amount received by said company for the transportation of passengers on said road, and the state's proportion thereof; provided, that the charge for conveying each person the whole distance between the cities of Baltimore and Washington shall not be reduced below the maximum of two dollars and a half, heretofore established, unless by the consent of the General Assembly, or in the recess of that body, by the consent of the governor and council, which consent shall be effective until the end of the session of the General Assembly next ensuing; and provided also, that in no case shall the amount received by the state from the Baltimore and Ohio Railroad Company for the conveyance of each person the whole distance between the two cities, be less than twenty-five cents; and provided, that at any time and at all times, whenever an application is made to the legislature by said company to reduce said maximum price, it shall be lawful for the legislature to make such regulation of charge as it may deem necessary, not reducing the transportation of passengers to the company below one dollar and fifty cents for the whole distance, and rateably for any shorter distance."* 1832, ch. 175, sec. 4.

*"Be it enacted, That the Baltimore and Ohio Railroad Company shall be authorized to regulate the tolls to be paid for the transportation of passengers on the Washington Branch of the said road, in their discretion, not exceeding the maximum heretofore fixed by law, Provided, that one-fifth of the passage-money received from the said Branch Road be accounted for and paid into the state treasury, as now required by law."* 1852, ch. 328.

The Act of 1830, above quoted, gave to the Baltimore and Ohio Railroad Company the right to charge one dollar and fifty cents for conveying each person the whole distance between Baltimore and Washington; but this power was operative and valid only within the state of Maryland.

The Act of 1832, above quoted, in terms conferred a new, specific, and unconditional power upon the Baltimore and Ohio Railroad Company to charge two dollars and fifty cents for conveying each person the whole distance between Baltimore and Washington, and in proportion for every shorter distance; but this provision, also, was only valid and operative within the state of Maryland.

The grant of power thus made, enabled the company to charge, *within the limits of the state of Maryland*, the proportionable rate, authorized by this section, although the state had not the

power to extend this increased rate to passengers travelling from point to point in the District of Columbia.

The grant of power thus made was good and valid, within the state of Maryland, and remained to that extent effectual and operative, even if other parts of the act were invalid: *State v. Davis*, 7 Md. 151; *Commonwealth v. Hitchings*, 5 Gray 482; *Mayor of Hagerstown v. Dechert*, 32 Md. 384, BARTOL, C. J.

It did not operate as a valid grant of power *within the District of Columbia*, because the right to collect tolls is a prerogative franchise (Redfield on Railways, ed. 1867, p. 87), and no state can make such a grant of power operative beyond its territorial limits. The company, within the District of Columbia, had no power to make any other charge than that permitted by the Act of Congress of March 2d 1831.

We shall now endeavor to show that the requirement made by the Act of 1832, ch. 175, sect. 8, to pay the money therein referred to into the treasury of the state of Maryland is unconstitutional and void, because it imposes a tax upon every person travelling upon the Washington Branch Road of the defendant, which tax is required to be collected by the company, and to be by it paid into the treasury of the state.

Every citizen of the United States, being a citizen and resident of any particular state, has a right to travel into or through any other state without paying for such privilege of entry, or transit, any tax or charge to the state into or through which he shall so travel. For, being a citizen of another state, and subject to its jurisdiction and taxing power, and not being temporarily resident even of the state into which he may enter for a purpose of travel or transit only, he cannot constitutionally be taxed by such state.

Such a power of taxation was substantially denied to the confederated states in the original Articles of Confederation; for therein it was declared that "the people of each state shall have free ingress and egress to and from any other state;" and it cannot be supposed that the Constitution of the United States intended to leave a larger power in the states, over citizens of other states, than was conferred by the Articles of Confederation.

In the case of *McCulloch v. Maryland*, 4 Wheaton 316, the limit and subject of the taxing power of a state is thus set forth:

"The sovereignty of a state extends to everything which

exists by its authority, or is introduced by its permission." \* \* \*  
"If we measure the power of taxation residing in a state, by the extent of sovereignty which the people of a single state possess and can confer on its government, we have an intelligible standard applicable to every case to which the power may be applied."

A yet more emphatic expression of the true limit existing upon the taxing power of the state is stated in *Howell v. State*, 3 Gill 14, 23.

In the case of *Hays v. The Pacific Mail Steamship Company*, 17 Howard 598, 599, 600, it was decided that ships engaged in the business and commerce of the country, owned and taxed at their home ports, and temporarily at a port within the jurisdiction of another state, are not subject to the taxing power of such state, because "not properly abiding within its limits so as to become incorporated with the other personal property of the state." They are "there temporarily engaged in lawful trade and commerce, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested."

If a steamship, touching for a few days or hours at a port within the limits of another state, is not subject to taxation by that state, because it is taxed elsewhere, and does not so abide within its limits as to become *incorporated with other personal property liable to taxation in such state*, it would seem to be unanswerably true that a citizen of another state, entering temporarily into the state of Maryland, in pursuit of some lawful purpose, but having his residence in another state, and being of necessity bound to pay taxes in such state, can, under no circumstances, be subjected to a tax for the support of the government of Maryland, into which he has temporarily entered. Before such a person can be so taxed, he must in fact reside in Maryland, and become, by reason of his fixed residence, a part of the mass of that people resident in the state which is, from the nature of state government, bound to contribute to its support.

If he is not a citizen or resident of Maryland, but is a citizen of any other of the United States, then by reason of the relation of these states to each other, and because of the common interest of the citizens of each state in pursuits and localities permitted and open to citizens of all the states, and because of the common

right of citizens of every state to enter and traverse every other state, and because of his being in nowise bound to pay taxes, while so engaged, to any power except his own state and to the United States, he is free to enter and depart from any other state without suffering the imposition of any charge, tax, or burthens from the state he shall so enter.

Such unquestionably has been the ruling of the Supreme Court.

In the *Passenger Cases*, 7 How. 492, Chief Justice TANEY said: "Living as we do under a common government, charged with the great concerns of the whole Union, every citizen of the United States, from the most remote states or territories, is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every state in the Union. \* \* For all the great purposes for which the Federal Government was formed we are one people, with one common country. We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own states. And a tax imposed by a state for entering its territories or harbors is inconsistent with the rights which belong to citizens of other states as members of the Union, and with the objects which that Union was intended to attain. Such a power in the states could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

Although this language forms part of a dissenting opinion in the *Passenger Cases*, yet it forms a part of the judgment of the same court in the case of *Crandall v. The State of Nevada*, 6 Wall. 48, and it is to be taken as undisputed law.

By section 8 of the Act of 1832, ch. 175, it is provided that the Baltimore and Ohio Railroad Company shall not reduce the charge for conveying passengers the whole distance between Baltimore and Washington below the maximum fixed by section 7 of the same act, of two dollars and a half, unless with the consent of the General Assembly, or, in the recess of that body, with the consent of the governor and council.

As by the 7th section the company could not increase the particular charge beyond two dollars and fifty cents, and by the 8th section could not make it less than two dollars and fifty cents, it

is plain that the requirement of the 8th section, which obliged the company to pay into the treasury, at the periods named, one-fifth of the whole amount received for the transportation of passengers on said railroad during the six months last preceding, was, in substance and in fact, a provision by which the state should receive from the Baltimore and Ohio Railroad Company the precise sum of fifty cents for each traveller transported the whole distance between Baltimore and Washington.

By the Act of 1830, ch. 158, sect. 3, the company was authorized to charge one dollar and fifty cents for the transportation of every passenger between Baltimore and Washington, and at the rate of four cents per mile for certain lesser distances.

By the Act of 1832, ch. 175, sect. 6, it was both authorized and compelled, if it accepted the provisions of that act, to charge the sum of two dollars and a half for transporting a passenger the whole distance between Baltimore and Washington, and it was authorized to charge in proportion, that is to say, in fact, six cents and a quarter per mile for conveying a passenger every shorter distance; but it was required to pay to the state one-fifth of the whole amount so charged and received for the transportation of passengers.

This was in effect to provide that the company might increase its charge between the two cities from one dollar and fifty cents to two dollars and fifty cents upon each through passenger, and from four cents per mile to six and one quarter cents per mile upon each way-passenger; but that it should also give to the state fifty cents out of the additional dollar paid by each through passenger, and one and a quarter cents out of the two and a quarter additional cents paid per mile by each way-passenger.

While the company, therefore, was in fact authorized to increase its charge for the service which it performed to travellers, by the sum of fifty cents for each through passenger and three-quarters of a cent per mile for each way-passenger, *the duty was also imposed upon it to charge and collect in its own name, but for the use of the state, fifty cents additional for every through passenger between Baltimore and Washington, and one and a quarter cents additional per mile from every way-passenger on such road.*

It is asserted that this arrangement was a mere *contract*, by which the contractors agreed to pay to the state, in each year, in consideration of receiving certain concessions, a stipulated por-

tion of its gross receipts; and that such arrangement cannot rightfully be considered as imposing a tax either upon the corporation or upon the passengers; but that if it could be considered as a tax, it must be held to be a tax not upon the *passenger*, but upon the *corporation*, and as amounting *pro tanto* to a waiver of the exemption from taxation secured to the company by the Act of 1826, ch. 123, sect. 18.

It was not a simple agreement to pay to the state a portion of the gross receipts of the company. It was, on the contrary, a provision of law by which the state gave power to the company to increase the amount of its gross receipts from each passenger in order that a portion of such increase should be so received for the use of the state, and should be paid into the treasury of the state.

It operated as a direct tax upon the passenger, and this unconstitutional exercise of power cannot be accomplished by a form of contract with a company engaged in the transportation of passengers. Nor was the act intended to operate as an agreed tax imposed upon the *company* by its own consent; for it authorized such rates of charge as left the company, if it exercised its powers, in the possession of larger revenues, after paying the tax, than it had under the privilege of complete exemption, which it enjoyed before the passage of the Act of 1832, ch. 175. It was an agreed tax, but it was imposed on those who were not parties to the agreement.

The revenue thus derived by the state was not a *dividend* upon any investment in the company. The state had subscribed to the special stock of the Washington Branch Road under a separate and distinct contract, authorized in the Act of 1832, ch. 175, § 1, and was authorized to receive its share, as a stockholder, of the net profits of the branch road (1832, ch. 175, §§ 2 and 3); but a share in the gross receipts made no part of any legal dividend.

The revenue thus derived by the state was not *interest* payable upon any debt, because the state was not in fact a *creditor* of the Washington Branch Road. It was not a semi-annual price or *bonus* paid by the company for the privilege of constructing the road, and operating it in connection with a road built under the authority of Congress, for the price was not in fact paid by the company. It was paid by those who travelled upon the road, as

a part of the price of their journey, although it enured to the exclusive use and benefit of the state.

If the money secured to the state by the operation of the Act of 1832, ch. 175, § 8, was neither dividend, interest, or bonus, what then was it? It was a tax imposed by the state upon every passenger travelling upon the Washington Branch Road.

One single illustration will complete the proof upon this point.

The Act of 1832, ch. 175, § 8, itself demonstrates that it was intended that the act should produce a specific revenue to the state from each passenger, because it provides that in *no case shall the amount received by the state from the Baltimore and Ohio Railroad Company, for the conveyance of each person the whole distance between the two cities, be less than twenty-five cents.*

The statute in question, it is believed, could not have operated differently or more specifically upon each passenger, if it had provided that each passenger should pay a certain schedule of prices upon the branch road—four-fifths of which price should be paid by such passenger to the company for its transportation, and one-fifth to the state for the privilege of transit. The act made the levy as completely on each passenger as the Act of 1843, ch. 289, made it upon the dividends of the stockholders referred to in that act: *State v. Mayhew*, 2 Gill 494, 497, 498. It was a legislative levy. Nor is the company, in this case, more a tax collector than in the case just cited.

The general argument that the tax imposed by the legislation to which reference has been made, if it be conceded that a tax is thereby imposed, is a tax upon the company, and one to which it has given its corporate assent, and not a tax upon the passengers, is answered by the case of *State v. Mayhew*, 6 Gill 495, already cited, and is identical, moreover, in kind with that insisted upon by Maryland in the case of *Brown v. State of Maryland*, 12 Wheat. 419. In that case it was argued that the Act of Assembly requiring the importer of foreign goods by the bale or package, and other persons selling the same, by wholesale, bale or package, to take out a license from the state, did not impose a tax upon the *article*, but on the *person*, as it is here argued that the tax is upon the *company* and not upon the *passenger*. But the court said: "It is impossible to conceal from ourselves that this is varying the form without varying the sub-

stance; it is treating a prohibition which is general, as if it were confined to a particular mode of doing the forbidden thing. All must perceive that the tax on the sale of an article imported only for sale, is a tax on the article itself."

If a tax on the sale of an article imported only for sale, is a tax on the article itself, then assuredly a tax on the price of a passage, paid only for the purpose of securing the passage, is a tax on the passenger himself. If the tax on the occupation of an importer is a tax on importation, *a fortiori*, a tax on the particular money paid by the passenger is a tax on the passenger. It must add to the price of a passage, and be paid by the passenger, in the same manner as if it were a tax levied on the passenger himself, because of his seeking such transportation.

So in the *Passenger Cases*, 7 How. 283, it was insisted that the taxes, provided for in the acts then under discussion, were imposed upon the owners of ships, and not upon passengers.

The law of Massachusetts provided that the owner, master, consignee, or agent of any vessel arriving in any port in that state, having certain alien passengers on board, should pay to the state boarding officer the sum of two dollars for each passenger so landed.

The law of New York provided that the master of every vessel coming from a foreign port or from a domestic port into the port of New York, should pay to the health commissioner of that port certain charges or sums for each person on board.

The Supreme Court held these laws to be unconstitutional and void; and the following extracts from the opinions will show the reason for the judgment of the court: "An impost, in its enlarged sense, means any tax or tribute imposed by authority, and applies as well to a tax on persons as to a tax on merchandise."

"If this power to tax passengers from a foreign country belongs to a state, a tax, on the same principle, may be imposed on all persons coming into or passing through it from any other state of the Union. And the New-York statute does in fact lay a tax on passengers on board of any coasting vessel which arrives at the port of New York, with an exception of passengers in vessels from New Jersey, Connecticut, and Rhode Island, who are required to pay for one trip in each month. All other passengers pay the tax every trip.

"If this may be done in New York, every other state may do

the same, on all the lines of our internal navigation. Passengers on a steamboat which plies on the Ohio, the Mississippi, or on any of our other rivers, or on the lakes, may be required to pay a tax, imposed at the discretion of each state within which the boat shall touch. *And the same principle will sustain a right in every state to tax all persons who shall pass through its territory on railroad cars, canal-boats, stages, or in any other manner.* This would enable a state to establish and enforce a non-intercourse with every other state:" *Passenger Cases*, 7 How. 407, opinion of Justice McLEAN. See also Justice CATRON'S opinion, pp. 445, 446, and especially the opinion of Justice GRIER, on pp. 458-462.

Judge GRIER, in his opinion, assumes that the obligation of the master or owner to pay a certain sum upon each passenger transported in his vessel amounted, in fact, to a tax upon the passenger. He says, on pp. 460, 461, "It must be admitted that it is not an exercise of the usual power to tax persons resident within a state, and their property, but is a tax on passengers, *qua* passengers. *It is a condition annexed to a license to them to pass through the state on their journey to other states. It is founded on a claim by a state of the power to exclude all persons from entering her ports or passing through her territory.*

"It is true, that if a state has such an absolute and uncontrolled right to exclude, the inference that she may prescribe the conditions of entrance, in the shape of a license or a tax, must necessarily follow. The conclusion cannot be evaded if the premises be proved. A right to exclude is a power to tax; and the converse of the proposition is also true, that a power to tax is a power to exclude; and it follows, as a necessary result from this doctrine, that those states in which are situated the great ports or gates of commerce have a right to exclude, if they see fit, all emigrants from access to the interior states, and to prescribe the conditions on which they shall be allowed to proceed on their journey, whether it be the payment of two or two hundred dollars."

In the case of *Crandall v. State of Nevada*, 6 Wall. 35, it was asserted on the part of the state that the tax imposed was levied on the carrier, or person engaged in the business of transportation, not upon the passenger. But the Supreme Court said: "If the act were much more skilfully drawn to sustain this hypothesis

than it is, we should be very reluctant to admit that *any form of words, which had the effect to compel every person travelling through the country by the common and usual modes of public conveyance to pay a specific sum to the state, was not a tax upon the right thus exercised.*"

The court having reached the conclusion that the act in question did in fact impose a tax on the passengers, for the privilege of leaving the state, or passing through it by the ordinary means of passenger travel, and after recognising in this case, as in the *Passenger Cases*, that the tax was demanded from other persons than the passengers only for convenience of collection, proceeded to inquire if such tax was in conflict with the Constitution of the United States. \* \* \* \* It said: "The people of these United States constitute one nation. They have a government in which all of them are deeply interested. This government has necessarily a capital established by law, where its principal operations are conducted. Here sits its legislature, composed of senators and representatives, from the states and from the people of the states. Here resides the President, directing, through thousands of agents, the execution of the laws over all this vast country. Here is the seat of the supreme judicial power of the nation, to which all its citizens have a right to resort to claim justice at its hands. Here are the great executive departments, administering the offices of the mails, of the public lands, of the collection and distribution of the public revenues, and of our foreign relations. These are all established and conducted under the admitted powers of the Federal Government. That government has a right to call to this point any or all of its citizens to aid in its service, as members of the Congress, of the courts, of the executive departments, and to fill all its other offices; and this right cannot be made to depend upon the pleasure of a state, over whose territory they must pass to reach the point where these services must be rendered. The government also has its offices of secondary importance in all other parts of the country. On the seacoasts and on the rivers it has its ports of entry. In the interior it has its land offices, its revenue offices, and its sub-treasuries. In all these it demands the services of its citizens, and is entitled to bring them to those points from all quarters of the nation, and no power can exist in a state to obstruct this right that would not enable it to defeat the purposes for which the government was established."

“But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it—to seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its seaports, through which all the operations of foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several states, and this right is in its nature independent of the will of any state over whose soil he must pass in the exercise of it.

“The views here advanced are neither novel nor unsupported by authority. The question of the taxing power of the states, as its exercise has affected the functions of the federal government, has been repeatedly considered by this court, and the right of the states in this mode to impede or embarrass the constitutional operations of that government, or the right which its citizens hold under it, has been uniformly denied. \* \* \*

“So in the case before us, it may be said that a tax of one dollar for passing through the state of Nevada, by stage-coach or by railroad, cannot sensibly affect any function of the government, or deprive a citizen of any valuable right. But if the state can tax a railroad passenger one dollar, it can tax him one thousand dollars. If one state can do this, so can every other state. And thus one or more states covering the only practicable routes of travel from the east to the west, or from the north to the south, may totally prevent or seriously burden all transportation of passengers from one part of the country to the other.”

See also *Cooley v. Board of Wardens*, 12 How. 319; *Steamship Company v. Port Wardens*, 6 Wall. 32; *Hinson v. Lott*, 8 Id. 152.

We are not obliged to discuss the validity of the laws of the state of Maryland, already alluded to, in their relation to the power of Congress over inter-state commerce. The portions of the acts already quoted would seem to be unquestionably void, because they relate to subjects which are “in their nature national, and admit only of one uniform system, or plan of regulation,” and are, therefore, void as regulations of a species of commerce, which the constitution designed to leave subject to the exclusive control of Congress: *Gibbons v. Ogden*, 9 Wheat. 1; *Minot v. Phila.*,

*Wilm. & Balt. Railroad Co.*, in Circuit Court of U. S., Delaware District, 1870. Philadelphia Legal Intelligencer, December 16th 1870.

It is greatly to be regretted that the opinions delivered by the several judges of the Supreme Court in the cases of *Gibbons v. Ogden*, 9 Wheat. 1; *City of New York v. Milne*, 11 Peters 102; *The License Cases*, 5 How. 504; *The Passenger Cases*, 7 Id.; *Almy v. State of California*, 24 Id. 169; *Woodruff v. Parham*, 8 Wall. 123; *Hinson v. Lott*, Id. 148, do not afford any complete or harmonious exposition of the relative power of the United States, and of the several states, over the question of internal commerce. But without noticing the points of essential difference, presented by certain of the opinions given by the judges in these several cases, it is sufficient to say that the Supreme Court, in its latest adjudications upon the questions involved in this discussion, has reaffirmed the case of *Crandall v. State of Nevada*: *Woodruff v. Parham*, 8 Wall. 138; *Hinson v. Lott*, Id. 152.

And since, in the case of *Crandall v. State of Nevada*, the judgment of the court rested in great part upon portions of the able opinion of Chief Justice TANEY in the *Passenger Cases*, and gave to that opinion, to the extent of the principle involved in this case, the force of authority, we may safely omit all examination of the cases involving the regulation of inter-state commerce, and, while we assert their authority, rest mainly upon the simple and conclusive statement with which the late Chief Justice closed his opinion in the *Passenger Cases*:—

“A tax imposed by a state for entering its territories or harbors is inconsistent with the rights which belong to the citizens of other states, as members of the Union, and with the objects which that Union was intended to attain. Such a power in the states could produce nothing but discord and mutual irritation, and they very clearly do not possess it:” 7 How. 492.

The Act of 1852, ch. 328, did not in anywise obviate the constitutional objection urged to the validity of the Act of 1832, ch. 175, § 8. This later act did not change the substantial nature of the arrangement made between the state and the Baltimore and Ohio Railroad Company, except by substituting an *ad valorem tax* for a *specific duty*. The effect of this amendatory act was equally to “add to the price of the article;” and the

tax thus levied was, in fact, paid by the passenger in like manner as a direct tax levied upon himself would have been paid: *Brown v. State of Maryland*, 12 Wheat. 419.

Nor did this Act so operate as to transfer the tax imposed by the Act of 1832, ch. 175, sect. 8, from the passengers to the company; for this act also added the tax levied under the Act of 1832, ch. 175, sect. 8, as thus modified, to the price of the transportation, and this tax was necessarily paid by the passenger: *Brown v. State of Maryland*, 12 Wheat. 419. It is indeed apparent from the structure of the amendatory act that it was not intended to impose any tax upon the company. It conferred no additional means of obtaining revenue upon the company, and therefore there was no apparent reason for making its enactment the occasion of a tax. On the contrary, it only permitted the company to charge a lower rate than it was then compelled to charge, and to revise its rate from time to time, as occasion might demand. But as the control thus given to the company over its own rates did not permit the state to ascertain by specific legislation the precise sum which it would receive from each passenger, an *ad valorem* rate of 20 per cent. was of necessity substituted in the place of the specific tax of 20 per cent. formerly imposed upon the specific fare of two dollars and fifty cents, which each passenger had been previously obliged to pay.

The state, in making this change in the system of its taxation, was governed manifestly by the same reasons which have from time to time induced Congress to substitute *ad valorem* duties for *specific* duties. Such imposts adjust themselves more readily to the fluctuating wants of commercial intercourse; but they are, equally with specific duties, imposts levied for the support of the government which imposes them.

There can be little doubt that the Supreme Court of the United States will pronounce the legislation of Maryland, to which we have called attention in this paper, to be as objectionable in principle as was the statute of Nevada; and that it will prescribe, in unmistakable language, the rule that no state has a right to levy taxes in any form upon those who, residing in another state, are exercising their constitutional right of travel from the state in which they reside to the seat of the National Government, or to any part of any of the other states or territories of the Union.

C. J. M. GWINN.