

File No. 36404 Continued.

1. The power of the Comptroller and Treasurer of the State to review the action of the State Tax Commission in such a case as this and reduce an assessment made by that Commission.

2. That the assessment as reduced by the Comptroller and Treasurer in this case was an arbitrary action.

As to the first. Hon. Alexander Armstrong, the Attorney-General of Maryland, on May 1st, 1923, at the request of the Comptroller and Treasurer, wrote an official opinion on the subject of the jurisdiction of the Comptroller and Treasurer. The facts involved in that opinion were: the State Tax Commission had entered a gross receipts tax against the Eastern Shore Trust Company, and the Company entered an appeal to the Comptroller and Treasurer, pursuant to Section 171 of Article 81, to have the matter reviewed. The Comptroller and Treasurer asked for the opinion of their law officer, the Attorney-General, as to "whether any duty now rests upon us to recognize this appeal and to act officially in connection therewith."

The main contention made was that since the creation of the State Tax Commission in 1914, the right of appeal theretofore existing for so many years to the Comptroller and Treasurer from the actions of the State Tax Commissioner had been abolished. This contention had its support by this argument: that by Section 239 of Article 81 (one of the sections of the law creating the State Tax Commission) it was provided among other things that:

"There shall be an appeal to Court on questions of law only from decisions of the State Tax Commission to the Court in that county where the property is situated, if real estate, or tangible personal property, or where the owner resides, if intangible personal property \* \* \*"

It was contended that the provision allowing an appeal on questions of law only should be applied generally to every action of the State Tax Commission, whether hearing a case on appeal or acting originally; that hence the matter of calculating a gross receipts tax was a question of fact and there should be no appeal on such a question. Consequently, the appeal provided by Section 171 had been abolished, even though not expressly, yet by implication.

Considering this, the Attorney-General ruled:

"The Commission \* \* \* while its decisions on questions of fact are final, this provision of the statute only applies in those classes of cases where this authority