

H
 95 Md. 419, 54 A. 253

Court of Appeals of Maryland.

GITTINGS

v.

MAYOR, ETC., OF CITY OF BALTIMORE.

Oct. 31, 1902.

On motion for reargument. Former decree of affirmance rescinded, and cause remanded without affirmance or reversal, under Code Pub.Gen.Laws, art. 5, § 36.

For former opinion, see [52 Atl. 937](#).

West Headnotes

Taxation 371 ↪ 2714

[371k2714 Most Cited Cases](#)

(Formerly 371k500)

Where a bill for relief against an alteration in an assessment does not allege that no notice of the purpose of the appeal tax court of Baltimore City to change or alter an assessment had been given, as required by Laws 1900, p. 603, c. 347, but the taxpayer alleges, on appeal, that he can show such want of notice, the cause will, under Code Pub.Gen.Laws, art. 5, § 36, be remanded for proceedings. Decree, [52 A. 937, 95 Md. 419](#), rescinded.

***253 PEARCE, J.**

A motion has been filed in this cause for reargument, or, failing in this, that the decree passed herein may be modified, and that, in lieu of the affirmance of the decree passed by the court below, the cause may be remanded, under section 36, art. 5, of the Code of Public General Laws, to the end that the appellant may have leave to amend his bill of complaint by averring therein that the appeal tax court of Baltimore City did not give him any notice of its purpose to change or alter his assessment upon "Ashburton" for the year 1901, under the provisions of section 164a of

the charter of Baltimore City. Laws 1900, p. 603, c. 347.

We have carefully considered this motion and the brief filed in support thereof, and we remain of the opinion that the bill cannot properly be regarded as denying that the required notice of the purpose of the appeal tax court to increase this assessment was given to the appellant, and in the present state of the record we should be compelled to adhere to the decree of affirmance heretofore passed. We stated in the opinion heretofore filed in this case that, if the failure to give such notice had been alleged in the bill, the demurrer must have been overruled, and the injunction granted. It is now alleged in the brief filed in support of the motion for modification of the decree that no such notice was in fact given, and that proof thereof can be made. If this be true, we think it equitable that an opportunity should be afforded to establish the fact; since, under an amended bill averring this fact, and sustained by proper proof, the appellant would be entitled to relief. [Paine v. France, 26 Md. 46; Johnson and Wife v. Robertson, 31 Md. 491.](#)

We shall, therefore, as authorized by section 36 of article 5 of the Code of Public General Laws, rescind the decree of affirmance heretofore passed, and shall, without affirming or reversing the decree of the court below, order the cause to be remanded, to the end that the bill may be amended as indicated, and that such further proceedings may be had, and such testimony be taken, as shall be necessary for determining the cause upon its merits in accordance with this opinion. As this course is due to appellant's failure to make the averment, now to be allowed by amendment, it is only proper he should bear the costs up to this stage of the cause.

***254** Decree of affirmance heretofore passed rescinded, and cause remanded, under section 36 of article 5 of Code , without affirming or reversing the decree of circuit court No. 2 of

Baltimore City, for further proceedings in conformity with this opinion; appellant to pay the costs above and below.

Md. 1902.

Gittings v. City of Baltimore

95 Md. 419, 54 A. 253

END OF DOCUMENT