

should so transport such coal, liable to account to the State for the payment of such tax thereon. The third, fourth, fifth, sixth and eighth sections prescribed the mode of collection of said tax, and of ascertaining the amount thereof, and the seventh section provided that when any Coal Mining Company was bona fide engaged in mining coal for sale, and paid the said tax on the coal so mined, that then such Company should not be liable for any State tax on its capital stock, but that the tax on the coal so mined should be in lieu of any other State tax.

A large amount of coal was mined by various Companies, and the tax paid to the Cumberland and Pennsylvania Rail Road Company, which latter Company removed the said coal and transported the same for sale, thus rendering itself liable under the Act to account for the State tax thereon. The Company reported to this office the number of tons of coal so transported, but refused to pay over to the Treasurer the amount of said taxes. Suit was accordingly brought, to recover the same, in the Circuit Court for Allegany county, and judgment being rendered in that Court for the defendant, the State took an appeal to the Court of Appeals. The case was argued in the Court of Appeals before seven of the Judges, (Judge Brent being at the time ill at his home,) and four of the Judges concurred in the opinion, that said tax, so far as it affected coal intended to be shipped beyond the limits of this State, was a tax on transportation, and the levying thereof conflicted with the power conferred by the Constitution of the United States on Congress, to regulate commerce between the States and with Foreign Nations, and that said tax was therefore unconstitutional. The same Judges also concurred in the further opinion, that the tax imposed by this Act, was a specific tax on coal as property, without assessment of value, and so in conflict with that provision of the Bill of Rights of Maryland, requiring equality of taxation in proportion to value. The other three Judges of the Court of Appeals who sat in the case, dissented from this opinion.

The judgment was not rendered until sometime after the Session of the Legislature had commenced, and as soon as