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SIXTH STREET DECREE IN FULL

DOCUMENT DISMISSING WRIT OF REVIEW QUOTED.

Various Points at Issue Discussed by Presiding Judge.

Details of the Sixth street paving decision handed down last Saturday by Circuit Judge J. W. Knowles, presiding at the hearing, is published herewith in full:

This is a proceeding to review the action of the city council of La Grande in attempting to improve Sixth street, between the south line of Washington avenue to the north line of K street, in said city, at the expense of the abutting and adjacent property owners. This is the second time that this improvement has been before this court upon review proceedings. The last writ was sustained and, according to the record certified to this court in the present proceedings, the city proceeded to re-assess the property benefited by the improvement.

Defects May Be Cured

Counsel for the plaintiffs, in support of the present writ, contends that the city had no right to go back to the inception of the original proceedings in the re-assessment proceedings. It is well settled, in re-assessment proceedings, that the council has a right to go back and cure all defective and irregular proceedings in the original assessment; and may also cure all jurisdictional defects. Page and Jones on Taxation and Assessment, Vol. 2, Sec. 962; Dunlavy vs. Portland, 47 Ore. 103. Even if the city in the re-assessment proceedings has gone back further than there was any necessity in going, the plaintiffs were not prejudiced in any of their rights. The charter of La Grande is peculiar in its wording for among

other things Sub. 9 of Sec. 35 provides:

Charter Requires Remedial Acts.
"If any assessment is set aside by order of any court, the council may cause a new one to be made in like manner for the same purpose for the collection of the amount so assessed." The words "in like manner," may be construed to mean that, in the re-assessment of property, that all the proceedings shall be following as necessary in making a valid original assessment.

New District Not Created.

Again, it is claimed by counsel for defendants that, in making the original assessment, a new improvement district was created including different territory than that included in the district as originally created. A resolution was at first adopted by the council in the original assessment proceedings declaring it expedient to improve Sixth street from the "north" side of Washington avenue to the north line of K street. Other and subsequent proceedings of the council described the portion of Sixth street to be improved as commencing with the "south" line of Washington avenue and extending to the north line of K street. The object of re-assessment proceedings is to correct just such mistakes and irregularities as this. Furthermore, it has been held that the council, in the re-assessment proceedings, has the right to change the original improvement district by adding to, or excluding, territory included, or not included, in the original improvement district. Page and Jones on Taxation and Assessment, Vol. 2, Section 970.

Acts of Council Not Reviewable.

Again, it is claimed that the re-assessment is void because the commissioners appointed to assess the benefit arbitrarily assessed the benefits the same as the commissioners appointed under the original proceedings. It is well settled that in the absence of fraud that the action of the commissioners and the council in assessing the benefits and apportioning the costs is not reviewable by the courts. Hughes vs. City of Portland, 53 Ore. 370.

Old Improvement Ordinance.

We come now to the consideration of the most serious question involved in this proceeding and that is the question whether or not Ordinance No. 4, Series of 1893, and amendments thereto, have been implicitly repealed by the adoption of the charter of the city of La Grande which was adopted by a majority vote of the legal voters of said city on the 22nd day of June, 1909. Ordinance No. 1, Series of 1893, provides that notice shall be given by publication of all proposed street improvements by grading, graveling, planking or building sidewalks thereon, unless a petition shall be presented to the council signed by two-thirds of the owners of the frontage along such street proposed to be improved. It is admitted by the city that this ordinance has not been complied with by the council in either the original proceedings or re-assessment proceedings, so, if the same is still in full force and effect, the giving notice being a pre-requisite to street improvements and, therefore, jurisdictional, the proceedings for the improvement of Sixth street would be absolutely void as well as the proceedings for the improvement of every other street since the adoption of the new charter.

Old Ordinance Should Be Repealed.

As long as the council does not deem it necessary to follow the provisions of Ordinance No. 4, Series of 1893, in street improvements, it certainly would be safer for it to repeal this ordinance so that then there could be no question about it being still in full force and effect.

In passing upon the question as to whether or not Ordinance No. 4, Series of 1893, is still in force and effect, this court must pass upon the question as a legal proposition and should not be influenced by the damaging consequences to the city on the one hand, or, on the other hand, the question that unless the council is restricted by the provisions of ordinance No. 4, Series of 1893, the new charter will give them almost unrestricted authority in matters of street improvements.

Council's Power Unlimited.

We will agree with counsel for the plaintiffs that unless Ordinance No. 4, Series of 1893, is still in full force and effect, the council under the present charter, has almost autocratic power over street improvements. If Ordinance No. 4, Series of 1893, is not still in force and effect, the council can, without any notice to the property owners, order the improvement of property that in some cases might result in the confiscation of their property. True, the property owners have a right to file a remonstrance but even if the remonstrance should be signed by every property owner, the council is not required to give heed to it. Under all the authorities, the assessment of benefits and the apportionment of the costs of the improvements is left solely to the judgment of the council, unless the property owner can establish fraud, which is always difficult to prove. The present charter of the city of La Grande was not thrust upon the people by the legislature but was adopted by the legal voters of the city themselves by means of the initiative. Even under the charter of Portland, the owners of two-thirds of the abutting property owners can defeat a proposed street improvement by filing a remonstrance.

Ordinance Does Not Apply to Paving.
Section one of ordinance No. 4, Series 1893, provides "That whenever the council shall deem it necessary to have any street graded, gravelled, planked or sidewalk built thereon, it

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shall order the same," etc. It will be noticed that nothing is said in this ordinance about paving a street. The word "paving" is used in section 3 but this ordinance gives no authority to the city to pave any street. This ordinance was passed when the city was still in its infancy and before it assumed any metropolitan airs. As suggested by one of the council at the argument, when this ordinance was passed bitulthic pavement was not invented or dreamed of.

Charter Differ from Ordinance.
The power of the council under the present charter is conferred by Sec. 37, which gives the council power "To grade, pave, plank, macadamize gravel, curb, or otherwise improve, repair, or beautify the highways, streets, avenues, lanes, alleys and sidewalks of the city and to provide for the payment of the expense thereof, and levy special assessments in the manner hereinbefore provided upon property which is especially benefited by any such improvement that is contiguous to or abutting or fronting upon the highway, street, alley, lane or sidewalk to be graded, paved, planked, gravelled, curbed, macadamized or otherwise improved or beautified."

As said before, Ordinance No. 4 does not require any notice to be given in case it is proposed to improve a street by paving it but only in case it is to be "graded, gravelled, planked or sidewalk built thereon."

Sub. 9 of Section 35 states: "The manner in which all special assessments for any of the purposes provided for in sub-division 27, 37 and 38 of this section shall be as follows:" Then there follows a specific statement of the manner in which a special assessment for street improvements shall be made and enforced.

Legal Principles.
Our supreme court has held that where a statute points out a particular manner in doing an act that all other methods of doing the act are excluded. Scott vs. Ford, 52 Ore. 288. It is also a familiar principle of law that, while repeals by implication are not favored, yet where the intention is clear that an act should be substituted for all pre-existing statutes, the court will so hold. In re Booths will, 40 Ore. 154, Erwin vs. Wheeler, 120 Pac. 10, 18 (Ok.).

Charter Repealed Old Ordinance.
It seems clear that it was the intention of the voters in the adoption of the present charter to substitute it in the place of all previous charters and ordinances of the city, but in subdivision 9 of Section 35 it is declared "After a compliance with this subdivision, the council shall be deemed to have acquired jurisdiction to order the making of such improvements."

Counsel for the plaintiffs in this proceeding contends that the council did not acquire jurisdiction unless they gave the notice as required by Ordinance No. 4, Series of 1893, yet this charter itself declares otherwise. We do not believe that Ordinance No. 4, Series of 1893, is still in force and effect but that it was repealed by the legal voters of this city by the adoption of the present charter.

Other objections were urged to the re-assessment proceedings at the argument but we deem them without merit.

More Legal Principles.
A different rule applies in passing upon re-assessment proceedings than in passing upon the original assessment proceedings. As said by the supreme court of this state in the case of Hughes vs. City of Portland, supra, "The general rule, that all tax proceedings shall be construed in favor of the taxpayer, often results in permitting him to profit by the mere non-observance of technical and unimportant matters, and thus obtain the benefit of an improvement to his property while contributing nothing to its payment, to the loss of either the contractor or municipality or both. It was to cover these defects and compel property owners to pay their due proportion of the cost of improving their property that the re-assessment provision was inserted in the charter and it should be so construed as to effectuate the purpose intended. It plainly authorizes an assessment or re-assessment of property, benefited by a

public improvement as often as may be necessary to compel it to bear its just proportion of the cost of such improvement. The intention of the charter is that no technical defects in the proceedings for the improvement of a street which has, in fact, been improved, to the benefit of adjoining property, shall prevent or stand in the way of the benefited property paying its just portion of the costs thereof."

Writ Dismissed.
It follows from the above conclusions that the Writ of Review should be dismissed and it is so ordered.
J. W. KNOWLES,
Circuit Judge.

SECRET INK.

Writing Which May Be Made Invisible or Visible at Will.
There are several ways in which two persons can correspond with each other unknown to even the people before whose eyes the very letter is held. Ovid taught young women when writing to their lovers they should use new milk as ink. This when dried is invisible, but by scattering coal dust or soot upon the paper the writing becomes legible. Albinus adopted this method when writing to Paulina.

Diluted sulphuric acid, lemon juice, solutions of nitrate and chloride of cobalt or of chloride of copper write colorless, but on being heated the characters written with the first two become black or brown and the latter green. When the paper becomes cool the writing disappears and leaves the paper blank again. Saltpeter dissolved in water and equal parts of sulphate of copper and sal ammoniac dissolved in water are two good invisible inks.

There are also some inks which are invisible when dry, but visible when moistened with another liquid. Thus a solution of muriate of antimony washed with tincture of galls becomes yellow, green vitriol ink washed with the same solution turns black, nitrate of cobalt washed with oxalic acid turns blue, arsenate of potash with nitrate of copper green, solution of gold with muriate of tin purple.

The Ferocious Microbe.

Life is growing too complicated for the average unlearned human being, says the Dietetic and Hygienic Gazette. It has been discovered by medical men that birds are dangerous carriers of disease—that "even the fluttering of a canary in its cage may throw out infection" and that as for the companionable, impudent parrot, he often suffers from something called psittacosis, which may be transmitted to the unsuspecting owner. The unfriendly germ, the vindictive animalcule, the blustering bacillus, browse on our carpets, hide in our books, hold swimming races in the water we drink. They seat themselves by our side in the trains, invade the very clothes we wear and penetrate to the innermost portions of our anatomy by means of the atmosphere which we shall very soon be cautioned not to breathe.

A Tart Critic.

The Abbe d'Aubignac, who wrote admirably on dramatic composition and had instanced many living examples of failure in that direction, was so imprudent after thirty years' silence as to write a tragedy himself. In the preface he boasted that he, of all dramatists, had most scrupulously observed the rules of Aristotle, whose inspiration he had followed! To this it was replied by one who had suffered from his criticism, "I do not quarrel with the Abbe d'Aubignac for having followed the precepts of Aristotle, but I cannot pardon the precepts of Aristotle that caused the abbe to write such a tragedy."

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