

IMPROVEMENT ASSESSMENTS ARE VALIDATED

(Continued from Page One.)

ment, the assessment and the apportionment of the cost. The city agrees to permit the owner to pay his assessment in installments in consideration of the waiver; the owner agrees to waive irregularities and defects in consideration of the privilege of paying in installments; each party gives and receives a consideration; and in the end the parties have made a contract. The obligation of the city is to permit the owner to pay in installments in the amounts and at the time prescribed by the Bancroft bonding act, and the obligation of the owner is to pay at the times and in the amounts specified. The city cannot by amendment to its charter change the terms of the contract without the consent of the owner.

Idea of Hanson Plan.

The Hanson plan attempts to change the contract made between the city and owner by changing the number and amount of the unpaid installments and extending the time over a period of thirteen years. The right of the city to change the very substance of its contract does not depend upon whether the change is advantageous to the owner, but it is dependent upon the consent of the owner; and hence it is beside the mark to say that the change is for the benefit of the owner. The Hanson plan is not merely permissive; it does not enable the owner to choose for himself; but its avowed purpose is to embrace all unpaid assessments by the compelling force of law; and, therefore, the Hanson plan is unlawful to the extent that it attempts to change the contracts which it made under the Bancroft bonding act, and also those made under the charter concerning water main assessments.

The changes worked by the Hanson plan and of which Colby complains, may be grouped into three classes: (1) Those which affect the number and amount of the installments and time of payment; (2) those which act upon the mode and method of enforcing the collection of delinquent assessments; and (3) those which deal with the consequences of delinquency.

Bancroft Bonding Act.

The Bancroft bonding act is framed upon the theory that the improvement, the apportionment and levy of assessments, and the collection of delinquencies are all governed and controlled by the city charter. When the assessment is apportioned and levied the property owner can prevent the city from enforcing the immediate payment of the whole assessment by invoking the restraining hand of the Bancroft bonding act and thereby divide the assessment into installments and extend the time of payment over a period of ten years; but if the owner permits an installment to become delinquent, the restraining hand of the statute is removed and the city is free to employ its own processes for the collection of whatever may be due. The contract between the owner and the city only embraces two subjects: (1) Payment; and (2) waiver. Obviously the agreement concerning the time and manner of payment does not include the mode of compelling payment or the consequences of delinquency. When the owner contracts with reference to the waiver he concedes that an assessment is already levied on his property and then agrees that he will not claim that it is an invalid assessment. Manifestly, the stipulation relative to the waiver does not also embrace a covenant relative to the mode of enforcing the collection of an assessment or the consequences of a delinquency. The parties have not by their own hands written into their contract any stipulations about the method of compelling payment or the consequences of delinquency.

Rights of City.

The city has a right to change the remedy for the collection of delinquent assessments, and not even a contractor who has agreed to look to the assessments for his compensation can complain so long as the new is as efficacious as the old remedy, and much less can a property owner complain. Even though the owner is viewed as the party to a contract which creates a debt by assessment and provides for the time and amount to be paid, he nevertheless could not object to a more efficacious method of compelling him to do what he agreed to do.

The law did not write into the contract between the owner of the Colby property and the city a stipulation that a delinquent assessment could only be collected in the mode provided at the time the contract was made; nor did the law insert a covenant that the consequences of delinquency could not be changed; and, since the

parties themselves did not contract about the mode of enforcing collections or concerning the consequences of delinquency and since the law did not introduce into the contract any stipulation upon those subjects, it necessarily follows that the contract clause of the federal constitution is not violated by the mere fact that the Hanson plan provides for a different procedure or imposes new and added penalties. The procedure attempted to be provided for by the Hanson plan contains some features which probably cannot be sustained on account of the fact that the power of the legal voters of Medford is limited to the enactment and amendment of their municipal charter and to the enactment of "local, special and municipal legislation."

Colby Not Injured.

The contention that Colby will be injured, if, at the sale of land for delinquent assessments, property is struck off to the city when there is no better offer to pay the full amount due, may be dismissed with the statement that it is competent to authorize a municipality to purchase in the absence of bidders even though the legislation conferring the authority is enacted after the assessment is made and before the sale.

The next contention made by Colby is that the levy of taxes for the purpose of paying interest on bonds in 1914, 1915 and 1916, and the payment of the taxes by the property owners, created a contract which obligates the city to waive the liens on property charged with special benefit assessments and to pay the entire indebtedness by general taxation. The right to tax does not grow out of or does it depend upon a contract between the property owner and the state or its agency; and hence it cannot be successfully contended that the levy and collection of taxes for the purpose of paying interest in those three years created a contract.

General Obligations.

Proceeding with his contention, Colby insists that even though a contract was not created by the levy of taxes for the payment of interest on bonds, nevertheless it will be inequitable to enforce the collection of assessments, and that the city should therefore be obliged to pay the whole of the indebtedness by general taxation. The bonds issued under the Bancroft bonding act are general obligations of the city. There is no provision in the statute limiting the payment of the bonds to funds derived from special benefit assessments; but, on the contrary, a reading of the Bancroft bonding act makes it plain that the statute contemplates that the bonds shall be regarded as liabilities of the city and that the city is obligated to pay the full amount of every bond without regard to whether the assessments have been or can be collected.

Rights Not Invalidated.

It is true that the city did not attempt to enforce the collection of any assessments by selling the assessed property, but it is also true that according to the admitted facts the city could not have sold all the delinquent property for enough to satisfy the full amount of the delinquencies.

Laying aside the pessimistic views taken by the plaintiffs, it nevertheless plainly appears from the admitted facts that to have sold delinquent property in 1914, 1915 and 1916 would merely have postponed the necessity of resorting to general taxation, because it is conceded that a deficit will remain after the property of non-paying owners is sold for delinquent assessments and sooner or later this deficit must be satisfied with funds derived from general taxation.

It is not necessary to decide whether the city could have been compelled to sell delinquent property before levying a general tax, for it is sufficient to say that the tax was levied and collected without any attempt to prevent it, and the property owners cannot now compel the city to waive its liens and pay all its indebtedness by general taxation.

Must Pay Interest.

Colby tendered the principal of the installment due on his property in 1914, but he refused to pay the interest on the theory that he had paid the interest by paying his taxes.

Taxes were levied on all taxable property in Medford, and out of these taxes the city paid the interest due on the outstanding bonds. It is true that when Colby paid his taxes the city used the money for the payment of interest due on bonds which the city had issued on account of the Colby assessment, and also for the payment of interest due on bonds which the city had issued on account of assessments against the property of other persons; but it is also true that persons who had paid their assessments in full as well as owners of property which had never been charged with any local assessment were required to pay their taxes and these taxes were used to pay the interest due on bonds, including the bonds which were issued on account of the Colby assessment. An owner whose property had never been charged with a local assessment could not have defeated the tax; nor could the owner of property on Grape

street have avoided paying the tax by showing that he had fully paid the street assessment levied against his own property. Payment of the tax was not payment of any part of the assessment.

Relief Not Justifiable.

To relieve Colby from paying interest on his assessment would be to extend to him a favor not accorded to those who have paid both their taxes and their assessment. There are no equities exempting Colby from the payment of interest on his assessment.

We have thus far considered and disposed of all the objections which Colby has urged against the Hanson plan. There is yet another objection which must be noticed because it is necessarily involved in this suit. The Bancroft bonding act was passed by the legislative assembly and it is a statute of statewide application, for it embraces every city and town in the state. The Bancroft bonding act possesses just as much validity now as it did when originally enacted, for it governs, controls and dominates every incorporated city and town in Oregon. When a property owner brings himself within the Bancroft bonding act he puts into operation a state law which completely controls the city so long as the owner promptly pays his installments and interest. The city is utterly powerless to enact and enforce municipal legislation which overrides this state law. The Bancroft bonding act does not compel any owner to come within its embrace, but it merely holds out an offer which an owner may accept or decline as he chooses. The city can legislate concurrently on the same subject provided its legislation does not attempt to compel owners to come within its embrace.

Conclusions Summarized.

In its present form the Hanson plan attempts by force of law to bring all assessed property within its embrace and it is therefore void to the extent that it attempts to operate upon property which has been brought under the protection of the Bancroft bonding act.

Our conclusion thus far expressed concerning the Hanson plan may be summarized thus: As against applicants under the Bancroft bonding act and also against applicants under the water main provisions of the charter the Hanson plan cannot be sustained because it attempts compulsorily to change the contract between the city and owners relative to the number and amount of installments and the time of payment; as against applicants under the Bancroft bonding act the Hanson plan is void, because the attempted municipal legislation conflicts with the state legislation; but neither the contract nor the state law would be violated if the Hanson plan were permissive instead of compulsory.

The printed brief for the plaintiffs in the Stailey case suggests several other objections, but it is sufficient to say that we have examined them and conclude that they are without merit. Stailey is not entitled to a cancellation of the assessments levied upon his property.

Assessments Unassailable.

Although it may be assumed that the Hanson plan would not violate any rights of owners who are neither within the protection of the Bancroft bonding act nor within the protection of the city charter provisions concerning water mains, yet the assessments which are protected by the charter and the Bancroft bonding act constitute such a large part of the total amount covered by the Hanson plan and so materially enter into the very framework and purpose of the plan itself as to destroy the whole measure.

The circuit court correctly decreed that the proceedings for the improvement of Grape street and for the assessment of the cost of the improvement were unassailable, and that the

RADICALS GAIN UPPER HAND IN RUSS COUNCILS

PETROGRAD, Sept. 19, Wednesday.—The growing supremacy of the Bolshevik element in the Councils of the Soldiers' and Workmen's delegates here and at Moscow, their radical programs eliminating all property-owning classes from a voice in the government, is a development which is causing great concern. The resignation of the executive committee of the council—Teheze, Skoboleff, Tseretelli and Tchernoff and others—came as a direct result of the adoption on September 13 by a large majority of a resolution committing the soldiers' and workmen's delegates to an ultra-socialistic line of conduct.

Further to verify the temper of the council and in view of the fact that there were many absentees at the time of the adoption of the program in question, the retiring members of the executive committee will offer themselves for re-election at the coming meeting, making efforts in the meantime to insure a full attendance. It is significant that the Moscow Council of Soldiers' and Workmen's delegates yesterday also adopted a program along virtually the same lines as that of the Petrograd council by the vote of 355 against 252, and demanded the resignation of the government commissioner, Kishkin, who is a constitutional democrat.

The Petrograd executive committee, in announcing their resignation, declared themselves out of sympathy with the program, asserting they could not take responsibility for the action of the Council of Soldiers' and Workmen's delegates to withdraw its representatives from any cabinet the constitutionalist democrats are represented. Avskenteff, a social revolutionist, and Skoboleff, a social democrat, according to reports, may withdraw their resignations later.

DIED

HARNISH—Susanna, wife of S. H. Harnish of Eagle Point, died of heart trouble at her home in Eagle Point, Wednesday, September 19, after a brief illness. She had resided in Eagle Point for the past seventeen years, and leaves, besides her husband, three children, who are: R. E. Harnish, Ray Harnish and Mrs. Dottie Dutton. The funeral services will be held at the family home Friday, September 21. The burial will be in the Central Point cemetery.

assessment against the Stailey property was a valid charge; and, therefore, this part of the decree is affirmed; but, for the reasons already stated, it was error to hold that the Hanson plan was a valid amendment to the city charter, and consequently this part of the decree is reversed. The city is entitled to a judgment against Stailey for costs and disbursements, while Colby is entitled to a judgment against the city for his costs and disbursements.

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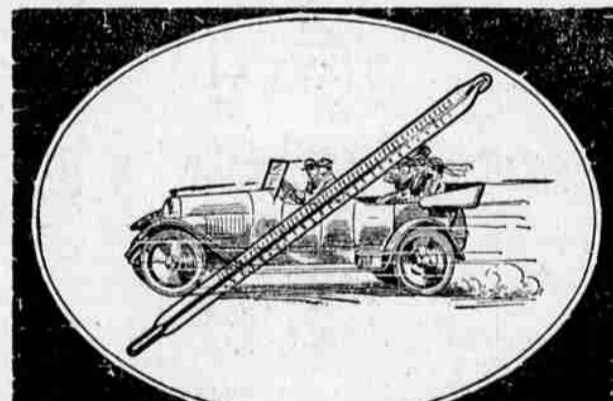
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