

Constitutional Law: Excessive assessment for pavement not taking property without due process

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NOTES AND COMMENT

Constitutional Law: Excessive assessment for pavement not taking property without due process.—Where the owner of lots abutting on a street has failed to take due advantage of his statutory remedies in connection with a special excessive assessment, it has been held in *Lytle v. Sioux City, et al* (Iowa 1924), 200 N. W. 416, that the enforcement of such assessment by the city council is not a taking of property without the process of law.

The Fourteenth Amendment to the United States Constitution provides: "Nor shall any state deprive any person of life, liberty, or property without due process of law." As is clearly indicated by its very language, this amendment constitutes a limitation merely on the powers of the state and its agents. It adds nothing to the rights of a citizen as against another, but simply furnishes a guaranty against any encroachment by the state on those fundamental rights which inherently belong to every citizen.

"Due process" has been defined by Judge Cooley as "such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

To what principles, then, are we to resort to ascertain whether the action by a city council is due process? In answering this question, we must first examine the Constitution itself, to see whether any of its provisions have been violated, and then look to the settled modes and principles of proceedings existing under the common and statute law.

The case under discussion clearly avoids any direct conflict with the Constitution itself. Hence, we must look to the principles of the common law and to the statutes for enlightenment. It has been held that "state statutes enacted in pursuance of the police power, for the promotion of the general welfare, may impose reasonable restrictions on the use and control of private property without violating the guarantees of due process."¹ The statutes of Iowa (Section 824) provide that: "All objections to errors, irregularities or inequalities in the making of special assessments, or in any of the prior proceedings or notices, not made before the city council at the time and manner provided for, shall be waived except in cases where fraud is shown." Under this section the appellant had every opportunity of contesting his assessment but failed to take advantage of it. Had he, as provided by this statute, properly objected, or had he prosecuted an appeal to the district court, it cannot be doubted but that he would have received the relief to which he was entitled. His failure constituted a waiver as has been repeatedly held. "Where the question raised does not relate to the jurisdiction of the council to make the assessment, but merely to the exercise of the power, in the absence of fraud, the statutory remedy is conclusive."²

¹ *Latimer v. McNeal*, 142 Fed. 451.

Ling Su Fan v. U. S., 218 U. S. 302.

² 179 Iowa 882; 162 N. W. 212.

Appellant might contend that the Supreme Court of Wisconsin holds contra but a careful analysis of the cases shows that this is a mistake. The Wisconsin court says: "Where special assessments for public improvements are involved, the remedy by appeal is not exclusive." It may be well to note, however, in passing, that this rule as announced by the Wisconsin court has been reluctantly followed in obedience to the doctrine of *stare decisis*. Certainly it is not necessary to involve the doctrine of estoppel for when the appellant failed to raise his objection, he waived all collateral rights thereto."³

The legality of the assessment cannot now be impeached on the grounds that the benefits are not immediately reflected in the present market value of the premises. The lots abutted on the street, as the facts clearly show. Consequently, the "owner cannot logically contend that there has not been any material benefits through this improvement."⁴

The nation has many cities in which this form of development is constantly going on. Through this method property is transformed from its native state and made more desirable for the erection of homes and factories. Our large cities of today are testimony of the beneficial changes that have been going on. True, the nature of the improvements renders it impossible to exact the precise value that has thereby resulted, yet such uncertainty gives no cause for valid objections. Some property, by its natural state, is necessarily assessed at a figure that is more than its actual value, yet a conclusion that the assessment is therefore void does not follow. "Property that was worthless before may, by such improvement, become greatly enhanced."⁵

We therefore conclude that the property was materially benefited; that it was thereby subjected to an assessment and that as the owner had been given the right to statutory objections, he was given due process. His failure estops him from being heard in the matter and prevents him from legally saying that he had been denied fundamental rights under the "laws of the land."⁶

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Sales: Manufacturers and Dealers impliedly warrant food products free from poison: Flour Manufacturers liability for death of customer of retailer from poison in flour. The plaintiff in the case of *Hertzler v. Manshum, et al.*, (Mich. 1924), 200 N. W. 155, sued for damages for the death of her husband which was brought about by arsenic poison contained in flour which was used for bread of which the deceased partook. The flour was manufactured by one of the defendants and sold to plaintiff by the other defendant, who was a grocer. The court held that the presence of poison in the flour was *prima facie* evidence of negligence and that the manufacturer was liable to the ultimate consumer for breach of implied warranty for food stuffs

³ *Kersten v. City of Milwaukee*, 109 Wis. 200; 81 N. W. 948.

⁴ *Camp v. City of Davenport*, 151 Ia. 38; 130 N. W. 137.

⁵ *In re Paving Floyd Park*, 196 N. W. 507.

⁶ *School District Board of Education v. Blodgett*, 155 Ill. 441; 40 N. E. 1025.