Indiana Law Journal

Volume 6 | Issue 6 Article 5

3-1931

Municipal Corporations-Supplemental Proceedings on Assessment Roll

MUNICIPAL CORPORATIONS—SUPPLEMENTAL PROCEEDINGS ON ASSESSMENT ROLL—The board of public works on November 9, 1915 approved a final assessment roll on the real estate of the appellees, among others, delivered it to the comptroller of Indianapolis, and issued a duplicate to the treasurer of the said city. Notices of final assessment were sent to the property owners, including appellees. After this the board undertook to make and adopt a supplementary or modified assessment roll without notice to or consent of appellees and they set this up as a defense in this action to foreclose the improvement lien, which is for the paving and curbing of West Tenth street in Indianapolis. *Held,* the supplementary assessment roll was invalid; judgment for appellees affirmed. *Butner v. McQuillin,* Appellate Court of Indiana, Sept. 25, 1930, 172 N. E. 658.

In its opinion the court said: "The facts of this case are similar in all essential respects to the case of *Vandergrifft (Board of Public Works) v. State ex rel. Sudbrock,* 199 Ind. 210, 156 N. E. 465 . . . and upon the authority of that case the judgment is affirmed." In that case which concerned appropriation of land for widening a street, the board of public works after finally approving the assessment roll which awarded Sudbrock $1,400 damages and $140 benefits, sent to the finance department of the city a final assessment roll which showed that Sudbrock was awarded only $1,000 damages and assessed benefits amounting to $500. When he protested, the board refused to deliver a true and correct copy of the original assessment roll to the finance department, but instead attempted to rescind the entire improvement scheme and all proceedings under it. The Supreme Court held it could not do this, being a court of special or limited jurisdiction, and that it was bound to transmit to the finance department a true copy of the assessment roll that it first approved. This case was governed by the statutes relating to appropriation of property, sections 8704-8706, 8709, Burns' Supp. 1921; which are sections 10355, 10357, 10360 Burns Ann. St. 1926. These sections provide that the assessment or award shall attach to each piece of property and notice thereof be given to the owner; that he shall remonstrate if he chooses; that after remonstrances have been received the board shall sustain or modify the assessments or awards and from this action the property owner may appeal to the courts; that on completion of such assessment roll the board shall deliver it to the department of finance, from which time the benefits, if in excess of the damages, shall be a lien on the property next to taxes; and that the person awarded damages in excess of benefits is entitled to a warrant from the finance department drawn on the city treasurer.

While the Vandergrifft case concerned the appropriation of property, the instant case concerns only the improvement of a street already laid out. Hence, although they were not cited in the opinion, the statutes which should govern this case must be those relating to street improvement, sec-

tions 10440 to 10449 Burns' Ann. St. 1926. These sections are similar in all respects to those relating to appropriation of property with the exception that no provision, of course, is made for awarding of damages in excess of benefits, but that on completion and acceptance of the work (of improvement) by the board of public works a certified duplicate assessment roll is to be delivered to the finance department and to the city treasurer, who shall collect thereon; and with this further exception (section 10448) that: "In case of any defect or irregularity which results or has resulted in the invalidity . . . of any assessment or assessments or the lien thereof, such defect or irregularity shall be remedied, supplied or corrected by supplementary proceedings had or taken in conformity to the provisions of this act. . . ." Acts 1905, p. 292; as amended Acts 1925, p. 211. It would seem to be self-evident from a mere cursory reading of the act dealing with appropriation of land that any supplementary assessment would be illegal. Were the street improvements statutes as explicit, the court would be justified in granting scant attention to this appeal. But there is possibility under sec. 10448 that the action of the board of public works might have been justified, as in *Curless v. Watson,* 54 Ind. App. 110, 100 N. E. 576, which upheld supplemental proceedings correcting a defective assessment. Whether the principal case could have come within this section, however, is not known inasmuch as the court neither cited this statute nor gave the reason for the attempted supplemental assessment—which assessment, it is possible, may have been an attempt to correct a defect beneficial to the appellee.

Cases decided under old statutes may not be in point in the principal case, which involves the interpretation of a new statute, but they indicate the tendency of opinion toward supplementary proceedings and assessments. *Ball v. Balfe,* 41 Ind. 221, held that the final estimate and assessment for street improvement may be amended or corrected by the common council of a city, but after an order is made for the improvement and it is determined what property will be benefited thereby, the line of improvement cannot be extended and such property charged with the expense thereof. *City of Columbus v. Stovey,* 35 Ind. 97. Nor can the estimate for improvements be increased at the stage of issuing and marketing bonds. *Porter v. City of Tipton,* 141 Ind. 347, 40 N. E. 802. Under Burns' R. S. 1894, sec. 4293, the court decided in *Becker v. B. & O. Ry. Co.,* 17 Ind. App. 324, 46 N. E. 685 that an erroneous or invalid assessment for street improvements could, upon proper application to the common council or board of trustees, be amended. A case in accord with the Vandergrifft case, supra, is *Gorman v. State ex rel. Koester,* 157 Ind. 205, 60 N. E. 1083, which held that after the assessment roll has been approved by the board of works and a copy delivered to the finance department, a court cannot compel such board to make a new assessment for such sum as the court may deem right. The case implies that even if the board was willing to abide by the order of the court it could not do so, for if its final assessment was unlawful it cannot amend it, but must proceed to make a completely new assessment. A board of public works may make another assessment when the first assessment for street improvement is void. *Helm v. Witz,* 35 Ind. App. 131; 73 N. E. 846.

Other jurisdictions have freely permitted the correction of errors and defects in assessments. *Hooker v. City of Rochester*, 30 N. Y. Supp. 297; *Carriger v. Town of Morristown*, 148 Tenn. 585, 256 S. W. 883. In Illinois it was held proper to permit the city treasurer's report and tax judgment sale and redemption record to be amended on an application for judgment and order of sale for the delinquent assessments. *Ottis v. Sullivan*, 219 Ill. 365, 76 N. E. 487. An even stronger case is *Patterson v. Corp. of N. Y.* (1828), 1 Paige 114, which held that where the assessment commissioners had deposited their report in the clerk's office and later had altered it without notice to the parties, notice of the alteration to the parties assessed was not necessary, or, if required, the omission was not such an irregularity as could be inquired into in chancery. These cases simply illustrate the irregularities and defects of assessments which sec. 10448 was designed to correct by giving to the board of public works the power to take supplementary proceedings to that end. Inasmuch as the question involved is purely one of statutory construction, the action of the court in affirming the judgment without citing the statutes involved, resting its decision on a single case decided under an entirely different set of statutes, albeit they were "essentially similar" and so of strong persuasive authority, is not quite as satisfactory as might be desired. J. W. S.