SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS IN THE CITY OF ST. LOUIS.

The Charter of St. Louis amended in 1901 provides in art. 6, sec. 14 that for all improvements of streets, avenues, and public highways, the expense should be paid, one-fourth part levied upon all property fronting or adjoining upon such proposed improvement, in the proportional share that each parcel bears to the aggregate; and that three-fourths of the cost shall be levied against all property embraced within the benefited area. The Charter further provides that the benefited area shall be determined by drawing a line midway between the street to be improved and the next parallel or converging street, on each side of the said proposed improvement.

Under the above Charter provision an ordinance was passed whereby a portion of Broadway was to be improved, and along the proposed improvement the Gast Realty and Investment Company owned a tract of land having more than one thousand feet frontage on Broadway and extending west to an average of more than four hundred feet. The "next street" running "parallel" to Broadway at that point was some thousand feet west of the proposed improvement.

In assessing that tract, the arbitrary line fixing the benefit district was drawn midway between Broadway and the next street, thus all of the tract was embraced within the area to be taxed. While across the street from this tract the property was taxed to a depth of two hundred and forty feet because of a street running parallel to "Broadway," and in tracts adjoining the Gast property where short streets paralleled the improvement, the "line" extended but one hundred feet west of "Broadway."

The contract for improvement was let to the Schneider Granite Company to whom the assessments were payable. The Schneider Company presented the Gast bill and upon a refusal to pay, brought suit.

The Missouri Supreme Court[1] upheld the assessment as lawful and proper. But upon writ of error to the United States Supreme Court the tax was declared unconstitutional.[2] That court held that the rule which so arbitrarily fixed the assessment district was

> "bad upon its face as distributing a local tax in grossly unequal proportions, not because of special considerations applicable to the parcels taxed, but in blind obedience to a rule that requires the result. . . The differences were not based upon any consideration of differences in the benefits conferred, but were estab-

lished mechanically in obedience to the criteria that the Charter directed to be applied."

In view of that holding by Mr. Justice Holmes, the Missouri Supreme Court rendered its further opinion in accordance with it.[3] Which was to the effect that the assessment was severable, one-fourth having the "frontage" basis, and the three-fourths being levied upon the "area" within the benefit district, and that the United States Suprece Court in its opinion had in no way affected the validity of the front-foot assessment, and that the assessment for that amount should therefore be entered up as a judgment against the Realty Co. But the Realty Company objected to the Missouri Court's ruling and filed a writ of error to the Supreme Court upon the ground that the Missouri Court committed error in rendering judgment against it. The Granite Company filed a cross-writ on the ground that the state court refused an area assessment. But the Supreme Court held that it was a matter of state law and for the state court to decide how an assessment should be made, so long as the manner prescribed by it in no wise violated the Constitution of the United States, and was made with respect to the rights of the parties thereunder.[4] It went on to hold that an assessment may be valid though the improvement is comcourt or by an assessing board, so long as it is made within the prohibitions of the Fourteenth Amendment to the Constitution.

Under the St. Louis Charter adopted in 1914, Section 10, of Article XXII, provides for improvements of streets, highways, etc., to be paid, one-third by abutting owners ratable by lineal feet, and the remainder to be levied against all ground within the benefit or taxing district. The taxing district is to be determined by a board of commissioners appointed for such purpose. They are to "view the property to be assessed"[5] and fix the district, giving notice of the time and place where such assessments will be made.

I have been unable to find any adjudication upon this section, but in view of the preceding cases and the rules there stated, I feel that this is a vast improvement over the previous arbitrary method of determining the benefit district. It conforms to the holdings of the United States Supreme Court and seems eminently fair in providing a notice and hearing under the "Due Process" clause of the Fourteenth Amendment to the Constitution. F. H. B.

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[1] 259 Mo., 153.
[2] 240 U. S. 55, 60 U. S. L. Ed. 523.
[3] 269 Mo. 551.
[4] U. S. Adv. Ops. 1917, page 120.
[5] Art. XXI. Sec. 5.