1955-1969

FSTC: Cornelius A. Gaston: M

Fairhope

10517-a

172

June 30, 1955

Mr. J. Rupert Mason
1920 Lake Street
San Francisco, Calif.

Dear Mr. Mason:

Your card with its indication of a friendly personal interest in the welfare of my family and Paul's arrived yesterday morning and was much appreciated. We are well here thank you. Paul and family are at Chapel Hill, N. C. where he is attending to his studies at the University of North Carolina. He has his MA in history now and is working for a doctorate degree. All are well and expect to get to Fairhope about the end of August for a couple of weeks vacation and visit.

I am enclosing a copy of the article to which Mr. Allen referred. Its writing was inspired by a request from Mr. Allen for a brief history of the Fairhope demonstration. I am also enclosing a copy of our annual report for 1954 which I am sure you will find of interest. I want to call your particular attention to my observations in the marked paragraphs on the last page and would appreciate such comment as you might care to make. It is my opinion that the Fairhope demonstration has no chance of making an impression by achieving magnitude but that it does have a good chance if it can achieve perfection in its application of the single tax principle.

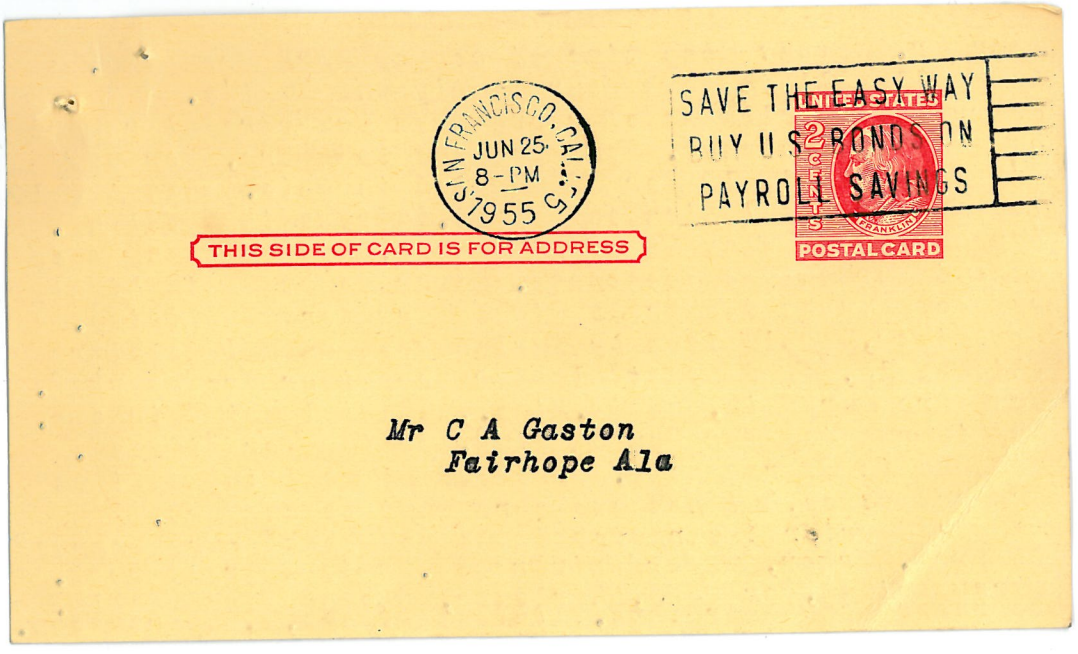
We understand that the University Press now has the manuscript of Dr. and Mrs. Alyea's "Story of Fairhope" and that there is good prospect of its publication this year. I have read the manuscript and consider it to be an excellent work. It should give local people and others a clearer understanding of Fairhope and I am hopeful that its studied comments and recommendations will be stimulating of greater effectiveness in our management.

"Henry George" by Prof. Barker is not yet in our Library but is now on order. The Courier will, I hope be able to get it suitably reviewed.

Your good work for the cause is much appreciated. Hope you have a most successful conference at St. Andrews. Always glad to hear from you.

Most sincerely yours,

_____
Secretary


SAN FRANCISCO, CALIF.
JUN 25
8-PM
1955
SAVE THE EASY WAY
BUY U S BONDS ON
PAYROLL SAVINGS
UNITED STATES
2 CENTS
POSTAL CARD
THIS SIDE OF CARD IS FOR ADDRESS
Mr C A Gaston
Fairhope Ala

Dear Mr.Gaston: Long time since any word from you. I hope all well in both your family and Paul's. HenryWAllen tells me of recvg from you "careful report of Fairhope Colony". Have you one to spare, for me? I'm lvg SF July 10 for HGSSS meet in Ohio. Then Aug 10 lve NY for Int'l UnionConf at St.Andrews in Scotland. Have attended many UN affairs here, this week and made some important new contacts. Never doubt HG is highly respected, even tho press gives Marx more publicity. CSMonitor, MAYE14 item by HarlanTrott on Cal Legsltre and JUNE 15, "UN & Const" letter to editor are "sparks". Send Mrs MaryCain, Summit, Miss., material abt Fairhope. She is running for Gov of Miss. Looking for "ideas". She was in SF recently. Impressed me as being against present taxes, but not too sure what to support.

Hope Courier has reviewed the new book "Henry George" by Prof. Barker, (Oxford Univ Press). It is a great book. Harry Golden, Box 2505, Charlotte, NC owns fine weekly. He knows many Georgists. Kindest wishes, J. Rupert Mason.

May 11, 1956

Mr. J. Rupert Mason
1920 Lake Street
San Francisco, Calif.

Dear Mr. Mason:

The Fairhope Book, Fairhope 1894 1954, The Story of a Single Tax Colony, University of Alabama Press, University, Ala. goes on sale to-day. I did not get a list of those to whom review copies had been sent but hope one got to the San Francisco paper and that it will get a good review there. The list price is $4.50. It is a 351 pages inclusive of appendix and index.

The authors have done a very thorough job in their presentation of the factors that both helped and hindered the colonists in their effort to establish here "a model community or colony". The discerning reader, I believe, will conclude that many of the more serious difficulties developed as a result of a lack of sufficient confidence inthe effectiveness of single tax principles or a lack of courage to fully apply those principles.

Several of the concluding chapters are by way of being an analysis of present colony practices and policies that I hope will receive the careful study and consideration of the current membership. They tend to support a conclusion voiced by me in the 1954 report: "that we must now depend upon the development of greater skill and efficiency in the application of our principles to achieve the full accomplishment of our purpose 'to establish and conduct a model community.' "

I feel sure you will find this book most interesting and I will be particularly pleased to have your appraisal. See no present prospect of going to Philadelphia but may be able to do so. Am momentarily expecting another grandchild and Mrs. G. is now at Chapel Hill with Paul and family to assist.

Thanks for calling my attention to the Harlan Trott articles. Do hope they are getting wide attention and influencing sound thought.

Sincerely,

_____

Secretary

June 22, 1955

Maury-Wharton Agency
Fairhope, Alabama

Attn. Mr. L. C. Maury

Dear Mr. Maury:

Your proposals for providing us with insurance coverage on accounts receivable and valuable records, etc., were brought to the attention of our Executive Council at its regular meeting June 16.

Some interest was evidenced but no positive decision reached and it was moved and carried to table the proposal. Should further consideration be given to the matter we will so advise you. Thanking you for your work in getting up the proposals we are,

Very truly yours,

_____

Secretary

L. C. MAURY M. BLUTHARDT

MAURY-WHARTON AGENCY
15 S. SECTION STREET
PHONE WA 8-9451
FAIRHOPE, ALABAMA

April 26, 1955

Chairman of the Board
Fairhope Single Tax Corporation
Fairhope, Alabama

Gentlemen:

Several weeks ago we had a discussion with Dr. Gaston regarding certain exposures at the Colony office that could be covered properly in an insurance policy. The enclosed coverages against certain losses are broad, reasonable, and the premium is not at all out of proportion to the risk.

The enclosures cover two important phases in the successful and continued operation of a corporation such as yours.

Enclosure #1--Accounts Receivable Form protects the Single Tax Corporation against all risk losses of accounts receivable records except from fraud and acts of war. In the event of a loss under the policy coverage, the Company will pay additional clerk hire to help re-establish accounts receivable records, will pay the interest on any money borrowed to maintain operations, pending settlement of loss, will pay for field work in the establishing the accounts receivable as they should be, and will pay the difference between that amount collected and the normal amount that would be due during that particular space of operations.

It may be noted here that a similar policy, though not as broad, could be written under a Fire Policy for $162.40.

Enclosure #2--Valuable Papers and Records Form protects the Single Tax Corporation against all risk loss of certain permanent records from all loss except wear, fraud and acts of war. It will reimburse the Colony for re-establishing these records or will pay the amount whether they are re-established or not.

900 land leases @ $3.00	$ 2,700.00
900 Rent cards @ $8.33	7,500.00
1 Land Book @ $1,000.00	1,000.00
	$11,200.00

L. C. MAURY M. BLUTHARDT

MAURY-WHARTON AGENCY
15 S. SECTION STREET
PHONE WA 8-9451
FAIRHOPE, ALABAMA

The premium on these forms are: Accounts Receivable based on a Provisional amount of $36,000.00 average outstanding accounts is $121.00 per year. Valuable Papers and Records based on the value of $11,200.00 is $123.53 per year, or an estimated total of $244.53 per year.

These forms would be contained in one parent policy and written in a sound, well established stock company.

We are pleased to aid on this and if we can be of further assistance on this or any other insurance matter, we will be delighted to be of service.

Yours very truly,

L. C. Maury

LCM:md

Next to cash on hand and bank deposits, your accounts receivable are your most valuable asset.

The money on your books, your *working capital,* enables you to maintain your credit rating and to set aside a percentage for the continuation and expansion of your business.

Our accounts receivable policy is designed to keep you "on the receiving end" should your books be destroyed. It is tailor-made to suit your needs and is the *only* guarantee that the inflow of money due you will continue.

NATIONAL SURETY CORPORATION

Telephone, write or drop in for details on this important policy.

B. F. ADAMS & COMPANY
"Nothing but Insurance"
167 ST. LOUIS STREET
MOBILE, ALABAMA
PHONE: 3-1617

F. 23387 A/R Rev. 1/54 10M-1-54

Where would *you be*

IF YOUR ASSETS *took wing?*

The total loss of your accounts receivable records is the most severe blow your business can sustain.

Yet they are exposed to many hazards—fire, tornado, flood, vandalism, theft, mutilation, water damage, explosion. You can't possibly remember every item on your books, and statistics show that 40% to 50% of your charge customers will never pay if your records disappear.

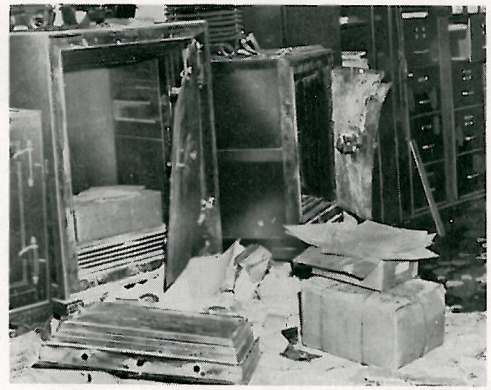
Forty-three out of one hundred business concerns that lose or have their accounts receivable records destroyed never reopen their doors. Can you afford to take this chance?

FIRE makes smoke out of your accounts receivable.

FLOODS have caused tremendous damage in various sections of the country.

VANDALISM leaves you debris instead of records.

EXPLOSION doesn't give you enough time to lock the records in the safe.



BURGLARY means you would have to depend upon your memory to collect.

TORNADOES have wrought havoc throughout the United States in recent years.

You eliminate a great risk when you spend a little to guard your accounts. You insure your merchandise; why leave your uncollected bills unprotected? Do it today *before* you are the "somebody else" in a fix. See us without delay.

Provisional Amount $36,000.00 @ .336

INLAND MARINE

Provisional Premium $121.00

IM 2511
(Ed. 4-54)

ACCOUNTS RECEIVABLE FORM

Attached to and forming part of Policy Number

issued to FAIRHOPE SINGLE TAX CORPORATION

by CALEDONIAN INSURANCE COMPANY at its Agency

located (city and state) FAIRHOPE, ALABAMA Date

1. Subject of Insurance.

(a) All sums due the Assured from customers, provided the Assured is unable to effect collection thereof as the direct result of loss of or damage to records of accounts receivable;

(b) Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage;

(c) Collection expense in excess of normal collection cost and made necessary because of such loss or damage;

(d) Other expenses, when reasonably incurred by the Assured in reestablishing records of accounts receivable following such loss or damage.

2. Perils Insured. All risks of loss of or damage to the Assured's records of accounts receivable, occurring during the policy period, except as hereinafter provided.

3. Location and Occupancy of Premises. The Assured occupies the following part: East side

of the building located at: 338 Fairhope Avenue

and conducts therein the following business: Fairhope Single Tax Corporation Office

4. Protection of Records of Accounts Receivable. Insurance under this policy shall apply only while records of accounts receivable are contained in the premises described above, it being a condition precedent to any right of recovery hereunder that such records shall be kept in the following described receptacle(s) at all times when the premises are not open for business, except while such records are in actual use:

Kind	Name of Maker	"Class" or "Hour Exposure" of Label	Name of Issuer of Label
Safe File	Remington Rand	One house	SMNA & UL

5. Removal. Such insurance as is afforded by this policy applies while the records of accounts receivable are being removed to and while at a place of safety because of imminent danger of loss or damage and while being returned from such place, provided the Assured gives written notice to the Company of such removal within ten days thereafter.

6. Limit of Insurance. The Company shall not be liable hereunder for an amount to exceed

Dollars ($ 78,000.00).

EXCLUSIONS

This policy does not apply:

(a) to loss or damage due to any dishonest, fraudulent or criminal act by any Assured, a partner therein or an officer, director or trustee thereof, whether acting alone or in collusion with others;

(b) to loss or damage caused by or resulting from:

(1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces;

(2) any weapon of war employing atomic fission or radioactive force whether in time of peace or war;

(3) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

CONDITIONS

1. **Premium:** The Assured shall, within twenty days after the end of each fiscal month during the policy period, furnish the Company with a written statement of the total amount of accounts receivable, with deferred payments and charge accounts segregated, as of the last day of each such month.

The premium stated in this policy is provisional only. Upon each anniversary and upon termination of this policy, the sum of the monthly amounts of accounts receivable for the preceding twelve months shall be averaged and the earned premium shall be computed on such average at the rate stated in this policy, whether or not such average exceeds the applicable limit of insurance under this policy. If the earned premium thus computed exceeds the provisional premium paid, the Assured shall pay the excess to the Company; if less, the Company shall return to the Assured the unearned portion paid by the Assured, but such premium shall not be less than any minimum premium stated in this policy. If this policy is issued for a period of three years, each such computation and adjustment shall be based on one-third of the rate, provisional premium and minimum premium.

(over)

2. **Inspection and Audit:** The Company shall be permitted to inspect the premises and the receptacles in which the records of accounts receivable are kept by the Assured, and to examine and audit the Assured's books and records at any time during the policy period and any extension thereof and within three years after the final termination of this policy, as far as they relate to the premium basis or the subject matter of this insurance, and to verify the statements of any outstanding record of accounts receivable submitted by the Assured and the amount of recoveries of accounts receivable on which the Company has made any settlement.

3. **Recoveries:** After payment of loss all amounts recovered by the Assured on accounts receivable for which the Assured has been indemnified shall belong and be paid to the Company by the Assured up to the total amount of loss paid by the Company; but all recoveries in excess of such amounts shall belong to the Assured.

4. **Adjustment of Loss:** In the event that the Assured cannot accurately establish the total amount of accounts receivable outstanding as of the date loss occurs, such amount shall be based on the Assured's monthly statements and shall be computed as follows:

(a) Determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;

(b) Calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the twelve months immediately preceding the month in which the loss occurs, or such part thereof for which the Assured has furnished monthly statements to the Company, as compared with such average for the same months of the preceding year;

(c) The amount determined under (a) above, increased or decreased by the percentage calculated under (b) above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal month in which said loss occurs;

(d) The amount determined under (c) above shall be increased or decreased in conformity with the normal fluctuations in the amount of accounts receivable during the fiscal month involved, due consideration being given to the experience of the business since the last day of the last fiscal month for which statement has been rendered.

In determining the amount of the Company's liability for any loss hereunder there shall be deducted from the total amount of accounts receivable the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the Assured, and an amount to allow for probable bad debts which would normally have been uncollectible by the Assured. On deferred payment accounts receivable, unearned interest and service charges shall be deducted.

5. **Assured's Duties When Loss Occurs:** Upon the occurrence of any loss which may result in a claim hereunder, the Assured shall:

(a) give notice thereof as soon as practicable to the Company or any of its authorized agents and, if the loss is due to a violation of law, also to the police;

(b) file detailed proof of loss, duly sworn to, with the Company promptly on expiration of ninety days from the date on which the records of accounts receivable were lost or damaged.

Upon the Company's request, the Assured shall submit to examination by the Company, subscribe the same, under oath if required, and produce for the Company's examination all pertinent records, all at such reasonable times and places as the Company shall designate, and shall cooperate with the Company in all matters pertaining to loss or claims with respect thereto, including rendering of all possible assistance to effect collection of outstanding accounts receivable.

6. **Other Insurance:** If there is available to the Assured any other valid and collectible insurance which would apply in the absence of this policy, the insurance under this policy shall apply only as excess insurance over such other insurance.

7. **Arbitration:** If the Assured and the Company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the Company, select a competent and disinterested arbitrator, and the arbitration shall be made at a reasonable time and place. The arbitrators shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the Assured or the Company, such umpire shall be selected by a judge of a court of record in the county and state in which such arbitration is pending. The arbitrators shall then arbitrate the loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Assured and the Company shall each pay his or its chosen arbitrator and shall bear equally the expenses of the umpire and the other expenses of the arbitration.

The Company shall not be held to have waived any of its rights by any act relating to arbitration.

8. **Fraud and Misrepresentation:** This policy shall be void if the Assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

9. **Settlement of Claims; Action Against Company:** All adjusted claims shall be paid or made good to the Assured within thirty days after presentation and acceptance of satisfactory proof of interest and loss at the office of the Company. No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor at all unless commenced within two years after the discovery by the Assured of the occurrence which gives rise to the loss. If this limitation of time is shorter than that prescribed by any statute controlling the construction of this policy, the shortest permissible statutory limitation in time shall govern and shall supersede the time limitation herein stated.

10. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all the Assured's rights of recovery therefor against any person or organization and the Assured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Assured shall do nothing after loss to prejudice such rights.

11. **Definition of Premises:** The unqualified word "premises" means the interior of that portion of the building at the location designated in Paragraph 3, "Location and Occupancy of Premises," which is occupied by the Assured for the business purposes stated therein.

12. **Changes:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

13. **Assignment:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Assured shall die, or shall be adjudged bankrupt or insolvent and written notice is given to the Company within sixty days after the date of such adjudication, this policy shall cover the Assured's legal representative as insured; provided that notice of cancelation addressed to the Assured named in this policy and mailed to the address shown in this policy shall be sufficient notice to effect cancelation of this policy.

14. **Cancelation:** This policy may be canceled by the Assured by mailing to the Company written notice stating when thereafter the cancelation shall be effective. This policy may be canceled by the Company by mailing to the Assured at the address shown in this policy written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing.

If the Assured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancelation is effected and, if not then made, shall be made as soon as practicable after cancelation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the Assured.

The terms and conditions of this form are to be regarded as substituted for those of the policy to which it is attached, the latter being hereby waived.

UNIFORM PRINTING PRINTED IN U.S.A. BROOKLYN-CHICAGO LOWELL AND SUPPLY DIVISION

. . . . . Agent.

INVISIBLE ARMOR

NATIONAL SURETY CORPORATION

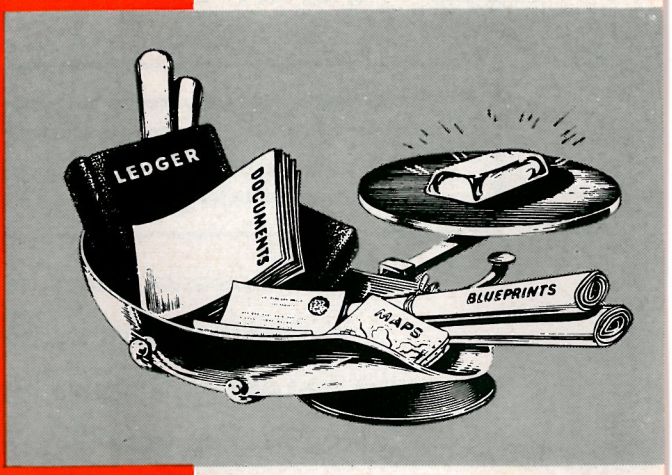
A MEMBER OF THE B. F. ADAMS & COMPANY INSURANCE GROUP

"Nothing but Insurance"

Telephone, write or drop in for details on this important coverage.

PHONE: 3-1617

F. 23352 V.P. 25M-5-54



Worth more than their weight in gold

. . . because your VALUABLE PAPERS AND RECORDS keep you in business *before* and *after* a disaster!

Could you effectively carry on your business if your valuable papers or records were lost, destroyed or damaged?

Could your business stand the expense of reconstructing your records to their former effectiveness?

Your Fire Insurance Policy, even when specifically endorsed*, pays only certain costs necessary to duplicate records. You would have to bear the cost of the extensive research, fees, labor and other expenses of reconstructing your files. These very records would be needed to support a claim under your Fire Policy.

Fire is only one of the many perils to which your records are subject. Hurricane, tornado, explosion, flood, collapse, vandalism and malicious mischief, strikes and riots, to mention a few, are some of the other perils which can cause substantial damage to your valuable papers. Your valuable papers, be they maps, drawings, blueprints, inventory records, tax receipts and social security forms can be lost, destroyed or damaged.

A National Surety Corporation

VALUABLE PAPERS AND RECORDS POLICY

is the most satisfactory solution to the many problems created by the destruction or damage of your records.

* *"The liability of this Company for loss to books of account, drawings, card index systems and other records shall not exceed the cost of blank books, blank pages or other materials, plus the cost of labor for actually transcribing or copying said records." (excerpt from a standard fire insurance policy.)*

No other form of insurance pays for the expense of research, material and labor necessary to restore your vital records.

Without obligation, we will be glad to furnish you with further information about this important coverage.

TELEPHONE, WRITE OR DROP IN TO SEE US TODAY!

(Our name, address and telephone number appear on the reverse side of this folder.)

Worth more than their weight in gold

Amount $11,200.00 Rate $1.103 Premium $123.53

INLAND MARINE

IM 2512
(Ed. 4-54)

VALUABLE PAPERS AND RECORDS FORM

Attached to and forming part of Policy Number

issued to FAIRHOPE SINGLE TAX CORPORATION

by CALEDONIAN INSURANCE COMPANY at its Agency

located (city and state) FAIRHOPE, ALABAMA Date

1. Property Covered. On valuable papers and records, as follows:

(a) Specified Articles	(Value Each)	Limits of Insurance
Land Leases -- 900	$ 300.00	$2,700.00
Land Book 1	$ 1,000.00	$1,000.00
Rent Cards 900	$ 8.33	$7,500.00

(b) All other

2. Perils Insured. All risks of direct physical loss of or damage to the property covered, except as hereinafter provided, occurring during the policy period.

3. Location and Occupancy of Premises. The Assured occupies the following part: East side of the building located at: 338 Fairhope Avenue

and conducts therein the following business: Fairhope Single Tax Corporation Office

4. Protection of Valuable Papers and Records. Insurance under this policy shall apply only while valuable papers and records are contained in the premises described above, it being a condition precedent to any right of recovery hereunder that such valuable papers and records shall be kept in the following described receptacle(s) at all times when the premises are not open for business, except while such valuable papers and records are in actual use or as stated in Paragraphs 5 and 6 below:

Kind	Name of Maker	"Class" or "Hour Exposure" of Label	Name of Issuer of Label
Safe	Herring Hall Marvin Safe Co.	One Hour	None

5. Automatic Extension. Such insurance as is afforded by this policy applies while the valuable papers and records are being conveyed outside the premises and while temporarily within other premises, except for storage, provided the Company's liability for such loss or damage shall not exceed ten percent of the combined limits of insurance stated in Paragraph 1, nor Five Thousand Dollars, whichever is less.

6. Removal. Such insurance as is afforded by this policy applies while the valuable papers and records are being removed to and while at a place of safety because of imminent danger of loss or damage and while being returned from such place, provided the Assured gives written notice to the Company of such removal within ten days thereafter.

EXCLUSIONS

This policy does not apply:

(a) to loss or damage due to wear and tear, gradual deterioration, vermin or inherent vice;

(b) to loss or damage caused by or resulting from:

(1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces;

(2) any weapon of war employing atomic fission or radioactive force whether in time of peace or war;

(3) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

(c) to loss or damage due to any dishonest, fraudulent or criminal act by any Assured, a partner therein or an officer, director or trustee thereof, whether acting alone or in collusion with others;

(d) to loss of or damage to property not specifically declared and described in section (a) of Paragraph 1, "Property Covered", if such property cannot be replaced with other of like kind and quality;

(e) to loss of or damage to property held as samples or for sale or for delivery after sale.

(over)

CONDITIONS

1. **Ownership of Property; Interests Covered:** The insured property may be owned by the Assured or held by him in any capacity; provided, the insurance applies only to the interest of the Assured in such property, including the Assured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the Assured's proof of loss.

2. **Limits of Liability; Valuation; Settlement Options:** The limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of insurance stated in this policy; provided, as respects property specifically described in section (a) of Paragraph 1, "Property Covered", the amount per article specified therein is the agreed value thereof for the purpose of this insurance.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of the property either with the Assured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. The Assured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other and the Assured shall be entitled to the property upon reimbursing the Company for the amount so paid or the cost of replacement.

Application of the insurance to property of more than one person shall not operate to increase the applicable limit of insurance.

3. **Assured's Duties When Loss Occurs:** Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the Assured shall:

(a) give notice thereof as soon as practicable to the Company or any of its authorized agents and, if the loss is due to a violation of law, also to the police;

(b) file detailed proof of loss, duly sworn to, with the Company within ninety days after the discovery of loss.

Upon the Company's request, the Assured and every claimant hereunder shall submit to examination by the Company, subscribe the same, under oath if required, and produce for the Company's examination all pertinent records, all at such reasonable times and places as the Company shall designate, and shall cooperate with the Company in all matters pertaining to loss or claims with respect thereto. The Company shall, in addition to the applicable limit of insurance of this policy, reimburse the Assured for all reasonable expenses, other than loss of earnings, incurred at the Company's written request.

4. **Other Insurance:** If there is available to the Assured or any other interested party any other valid and collectible insurance which would apply in the absence of this policy, the insurance under this policy shall apply only as excess insurance over such other insurance.

5. **Appraisal:** If the Assured and the Company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the Company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the Assured or the Company, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Assured and the Company shall each pay his or its chosen appraiser and shall bear equally the expenses of the umpire and the other expenses of appraisal.

The Company shall not be held to have waived any of its rights by any act relating to appraisal.

6. **Action Against Company:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty days after the required proofs of loss have been filed with the Company, nor at all unless commenced within two years after the discovery by the Assured of the occurrence which gives rise to the loss. If this limitation of time is shorter than that prescribed by any statute controlling the construction of this policy, the shortest permissible statutory limitation in time shall govern and shall supersede the time limitation herein stated.

7. **Fraud and Misrepresentation:** This policy shall be void if the Assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

8. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all the Assured's rights of recovery therefor against any person or organization and the Assured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Assured shall do nothing after loss to prejudice such rights.

9. **Definitions:**

(a) **Valuable Papers and Records**—The term "valuable papers and records" means written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, but does not mean money or securities.

(b) **Premises**—The unqualified word "premises" means the interior of that portion of the building at the location designated in Paragraph 3, "Location and Occupancy of Premises", which is occupied by the Assured for the business purposes stated therein.

10. **Changes:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

11. **Assignment:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Assured shall die, or shall be adjudged bankrupt or insolvent and written notice is given to the Company within sixty days after the date of such adjudication, this policy shall cover the Assured's legal representative as insured; provided that notice of cancelation addressed to the Assured named in this policy and mailed to the address shown in this policy shall be sufficient notice to effect cancelation of this policy.

12. **Cancelation:** This policy may be canceled by the Assured by mailing to the Company written notice stating when thereafter the cancelation shall be effective. This policy may be canceled by the Company by mailing to the Assured at the address shown in this policy written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing.

If the Assured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancelation is effected and, if not then made, shall be made as soon as practicable after cancelation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be sufficient tender of any refund of premium due to the Assured.

The terms and conditions of this form are to be regarded as substituted for those of the policy to which it is attached, the latter being hereby waived.

UNIFORM PRINTING PRINTED IN U.S.A. BROOKLYN-CHICAGO LOWELL AND SUPPLY DIVISION

. . . . . Agent.

Fairhope, Ala.
March 17, 1955

Single Tax Corporation,
Dr. C. A. Gaston, Secretary

Gentlemen:

The dust on South Church Street is rising in large dust clouds and is becoming very disagreeable. We have to keep our doors closed to keep out as much as possible.

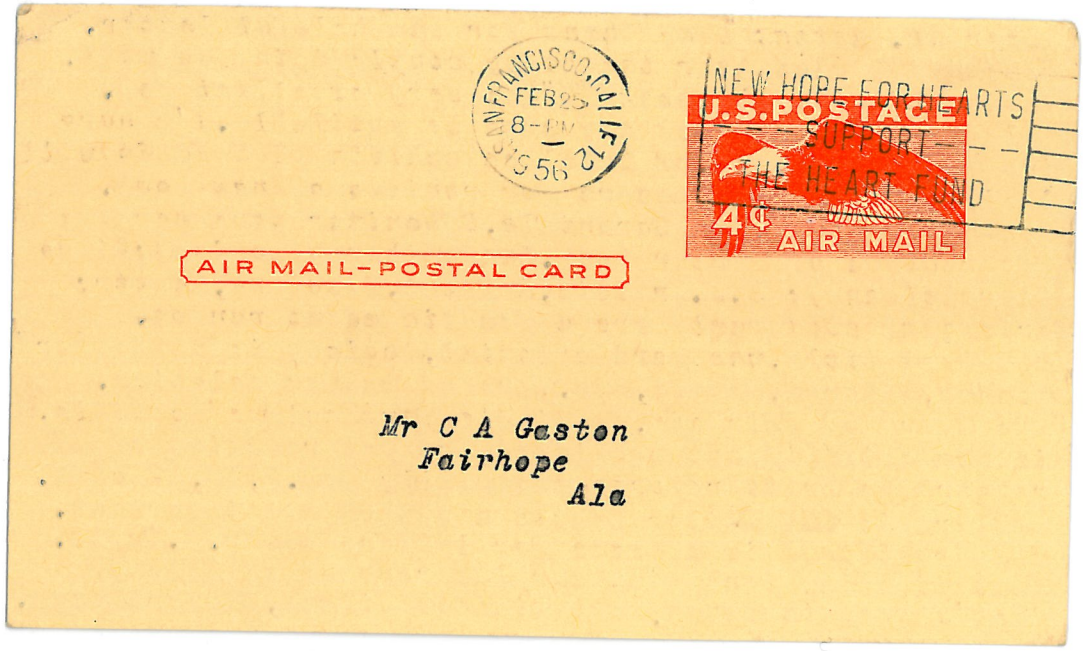
That brings up again the question of street paving, The sooner it can be done the better it willsatisfy the people living on the street. Mr. White and Mr. Jonas ane very anxious to have the work done.

In your recent letter you mentioned that you would take up the matter of clearing the right of way of your part of South Churchin your 1955 project. I hope it can be done soon so we can work toward the paving and eliminate the dust.

With kindest regards I remain,

Yours very truly

Mr. and Mrs. Dan B. Meador


SAN FRANCISCO, CALIF.
FEB
8-PM
56
NEW HOPE FOR HEARTS
SUPPORT
THE HEART FUND
U.S.POSTAGE
4¢
AIR MAIL
AIR MAIL-POSTAL CARD
Mr C A Gaston
Fairhope
Ala

Dear Mr. Gaston: Many thanx for the helpful letter. Especially glad hear the happy couple doing so well. Thot review of the book "HG" was very excellent job. Glad know Alyea book may soon be available. I'm sure Miss VG Peterson, Sec. of Schalkenbach Fdtn NY (50E69St) will gladly suggest best papers for reviews of new book. Los Angeles TIMES, SF Chronicle, CSMonitor gave perhaps best reviews of Barker book. Land&Liberty (London); Viggo Starcke (Denm); E.J. Craigie, 8 Grant, Rose Park, SAustr; Jerusalem Post (Israel) are a few picked at random. Abt book title, the word colonial, &colony is "unpopular" Monaco, Andorra, Canada, etc., are no longer colonies. "The Story of Fairhope, A Single Tax Enclave" as title, is suggested (if not too late). Try get reaction of CSM readers to Trott reports, especially Dec. 3, 13, 27 ones. Letters to CSM Editor, Boston abt them are important. 625 Market St SF is address for letters to Mr. H. Trott. What is being done with surplus revenue of Colony? Let's keep in touch. All kindest wishes, J Rupert Mason.

August 30th-55

Mr C. A. Gaston
Secretary Virgil Lovelace
Fairhope
Alabama

Dear Bonnie:

Thanks for your letter of explanation and of course am pleased to know that I seem to be paid up for the year but I am certainly puzzled. The reason I thought I must have paid by cash last January is that I could not find the cancelled check amongst those of January. However as I live in three different houses during the year the check might somehow get displaced and be either in Ayer or Fairhope. Another thing I don't understand is, why I should write about it when I was right there in Fairhope. Perhaps it was earlier in -54, August or so when I wrote. Anyhow since it appears

that I don't owe anything
at present the matter can wait
till I come down to Hairhope.
(I don't usually save receipts
as cancelled ~~check~~ is best evidence).
Hope to see Fairhope and all
friends by Christmas
Sorry you have had this
trouble and thanking you
Harpie G. MacLaren

Yeager

When you purchase the 1954 ~~Tag~~ license tag for your car this year be sure to report to the assessor that you live outside the corporate limits of the City of Fairhope. If you fail to do so you may be charged with the City tax.

Myrtle H Yeager
Horace L. Bell
Wm. L. Flynn
Selwyn A DeHomme
Geo. W. Scott
Milton V. Havel
Alvin B. Robinson
Harry A. Williams
Wilbur L. Taylor
Wm. W. Creamer
Claudine M. Dowdle
Wade Van Dore
Bobby G. Gobb
Jas. D. Boothe
Hal D. Lowell
Harry L. Gentry
Clyde W. Miller
Mrs. Hazel W. Roberts
Geo. A Mizerany

April 24, 1957

Dear Mr. Mason:

I was shocked to learn of Mr. Madsen's death and very much disturbed to learn that you were confined to your home by illness. I sincerely hope that by the time this reaches you you will be fully recovered.

After receiving your message written in the margin of the first page of the April 4 issue of The Summit Sun, Ray W. Lynd, now of Melbourne, Florida stopped by here on his way to the Congress and urged me to come if possible. Mrs. Gaston and I did get over for Friday's day-time sessions. We might have stayed for more had not the urgency of office obligations demanded my personal attention. Also I quickly learned that the Congress appeared to be wholly concerned with effects rather than causes. While there I discovered only three of us who were concerned with the private confiscation of the publicly created land values.

We know that government cannot exist without revenue and we know that so long as it permits the private appropriation of the publicly created land values it has no recourse except by appropriating privately created wealth. One of the speakers did make the statement that: "He who controls a man's subsistence controls the man." It was disappointing not to have him carry through with the obvious conclusion that man can properly provide his subsistence by applying his own productive effort on land leading to the restatement that: "He who controls the land controls the man."

Mr. Lynd was quite favorably impressed by our accomplishments here, particularly so as he had expected, from outside reports, to find here that the colony was declining and confidence in the single tax waning. He promised to correct such erroneous information at its source. Again let me express my sincere hope for your physical welfare

Sincerely yours,

P. S. Mary Cain, Carton Stone and Wisler as well as Lynd asked me to convey regards and best wishes to you.

April 24, 1957

Mr. J. Rupert Mason
1920 Lake Street
San Francisco, Calif.

Dear Mr. Mason:

I was shocked to learn of Mr. Madsen's death and very much disturbed to learn that you were confined to your home by illness. I sincerely hope that by the time this reaches you you will be fully recovered.

After receiving your message on the front page of The Summit Sun Ray W. Lynd, of Melbourne, Florida stopped by here on his way to the Congress and added his invitation to yours. Mrs. Gaston and I did get to Biloxi for Friday's day-time sessions but office obligations and the realization that I could be of little effective service there made is forego further attendance.

While it was encouraging to learn something of the breadth of discontent with governments' invasion into the private affairs of individuals and their expanding confiscation of private wealth it was discouraging to discover only three of us who knew private confiscation of the publicly created land values

Dear Mr Gaston—

Did you get my card asking for Colony reports?

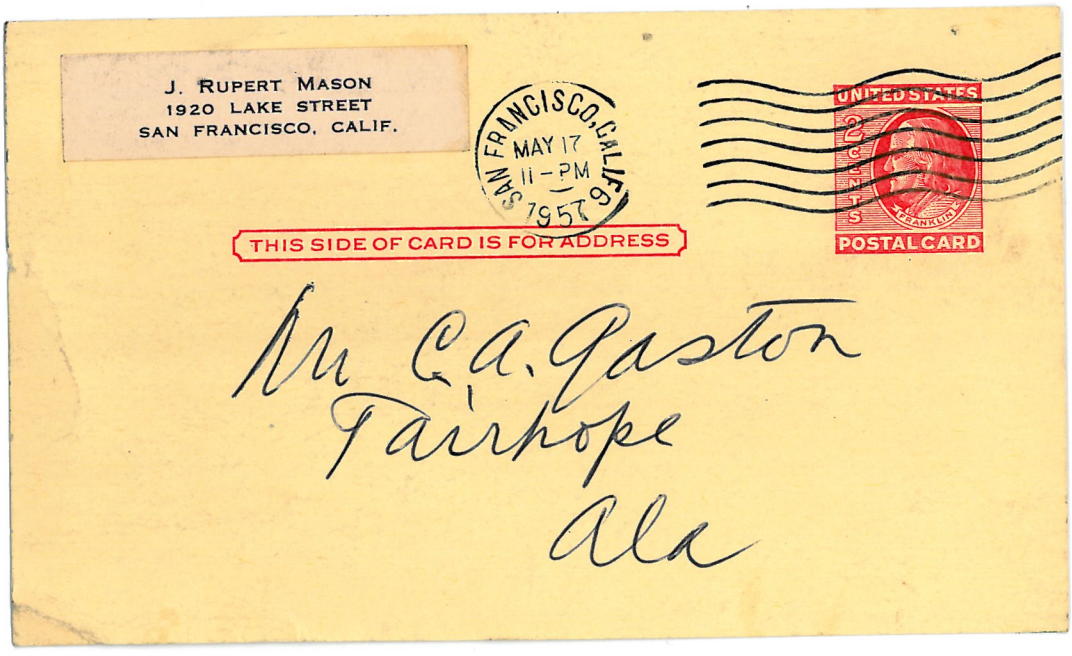
National election in Denmark May 14 the "Single Tax" party won nine seats in Parliament again 1 50%. "Communists" lost 50%.

Your annual report ought to be sent to many magazines in Eng. Denmark, Australia New Zealand, Canada, etc.

Dandope is no "experiment".

Cordially & sincerely

J. Rupert Thrasm


J. RUPERT MASON
1920 LAKE STREET
SAN FRANCISCO, CALIF.
SAN FRANCISCO, CALIF.
MAY 17
11 - PM
1957
UNITED STATES
2 CENTS
FRANKLIN
POSTAL CARD
THIS SIDE OF CARD IS FOR ADDRESS
Mr C.a. Gaston
Fairhope
Ala

Nov. 23, 1957

Dr. and Mrs. Henry C. Mullins Jr.
317 Magnolia Ave.,
Fairhope, Alabama

Dear Dr. and Mrs. Mullins:

Your letter addressed to our Executive Council was presented to the council at its meeting of November 7 and I should have replied to it earlier. However I had just returned from vacation on that day and have been very much occupied since my return.

At the same meeting the lot to the North over which you had considered an easement was applied for and leased, nor does the council consider that such easements should be allowed where they can possibly be avoided. Also there have been a number of others who have been dissuaded from filing application for the lots and leasing them to you without general notice of their availability might invite unfavorable criticism.

We regret that we cannot predict when these lots will be available, but there is early prospect that some lots on the West side of the gully will be available in the near future. At the meeting last Thursday the engineer proposed the opening of additional right of way South of Johnson St. and was instructed to get bids for the clearing and construction of sanitary sewer. We will be glad to show you the locations. Regretting that we must make an unfavorable report we are,

Sincerely yours,

_____
Secretary

H. C. MULLINS, JR., M. D.
317 MAGNOLIA AVENUE
FAIRHOPE, ALABAMA

November 5, 1957

Executive Council
Fairhope Single Tax Corporation
Fairhope, Alabama

Gentlemen:

We request that the Fairhope Single Tax Corporation make available for lease, Lots 10 and 11, Block 6 of the Golf Course Subdivision, and that we be allowed to make application for such. If these requests are granted, and if the lots are eventually leased to us, we also request that an easement be granted across the property described below as a temporary measure until a sewer main is available on Belange Street.

We have been residents of Fairhope for over a year and will remain here permanently. In searching for a desirable site for a home, we inquired about the area in the Golf Course Subdivision directly west of the site at which Lucia Rockwell is now constructing a home. We found that (1) the lots were not available for lease, and (2) there is no sewer available on Belange Street, but will be provided when the street is paved.

The city water department has stated that a satisfactory sewer system could be provided by tying into the Johnson Street main until such time as a sewer main is available on Belange Street. In order to tie into the Johnson Street main, it would be necessary to secure a six-(6) foot easement across the land immediately west of Lot 7, Block 6, which is Fairhope Single Tax Corporation land not under lease at the present time.

Respectfully submitted,

Henry C. Mullins, Jr.
Henry C. Mullins, Jr.

Jo Ann B. Mullins
Jo Ann B. Mullins

Oct. 31, 1955

Mr. Fred T. McLendon
Union Springs, Ala.

Dear Lessee:

Our records show that you owe us all of this year's rent and the rent for a part of 1954. The record also indicates that we have received from you no cash payment since July 6, 1953 when you made remittance of the balance due for that year's rent.

If paid by the fifteenth of November the amount to balance your account will be $581.61. Paragraph of the lease contract authorizes us, whenever the rent or any part of it is due and unpaid for six months "to sell at public sale the improvements on any leasehold, for satisfaction of the amount due, after first giving ten days notice by one publication in some paper published at Fairhope, Alabama, the cost of such publication and the making of such sale to be paid with the rent out of the proceeds of such sale."

We shall expect an early and substantial response to this notice. The amount shown above includes interest on the delinquent account as provided in the lease contract, 8%. Your account must be paid in full if we are to pay the taxes for you.

Very truly yours,

_____
Secretary

Copy to:
Mr. Lawrence K. Andrews
Union Springs, Ala.

Paid in full July 18, 1955
Cashier failed to transfer credit
from Cash Book to Ledger

Oct. 27, 1955

Mr. Ellis H. McLain
Stockton, Alabama

Dear Lessee:

We note that you have paid no rent this year on the unimproved lot leased from us. We wish to call to your attention that paragraphh (6) of the lease contract provides that whenever the rent due on an unimproved lot is due and unpaid for ninety days the lease to such lot may be declared forfeited without notice.

We billed you January 1 for the first half of the 1955 rent so in accordance with your lease it has been subject to forfeiture without notice since April 1. Although we neglected to take action at that time all such leaseholds will be considered for appropriate action at our next council meeting, Nov. 3. If you wish to maintain your lease in force you should make payment immediately of the amount due, $52.98.

Unless you have need to or intend to make personal use of this lot in the near future we can see no advantage to you in continuing your lease. You will note by reading the enclosed application that we will not allow a transfer of the lease at any profit to you nor at a figure that would secure you in the repayment to you of the rent you have paid. You would be entitled only to be reimbursed the amount paid to us for the trees on the lot when it was first leased from us, $30.00.

Very truly yours,

Secretary

Rent 51.58
Pen 1.40
52.98

Rec'd Check for full payment
Nov 5, 1955

No. 10,670

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

J. R. MASON,

Appellant,

vs.

BANTA CARBONA IRRIG. DISTRICT,

Appellee.

APPELLANT'S OPENING BRIEF.

J. R. MASON,
1920 Lake Street, San Francisco,
Appellant in Propria Persona.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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Cases

No. 10,670

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

J. R. MASON, *Appellant,*

vs.

BANTA CARBONA IRRIG. DISTRICT, *Appellee.*

APPELLANT'S OPENING BRIEF.

JURISDICTIONAL FACTS AND PLEADINGS.

This proceeding is a petition for composition of certain bonds and warrants of Banta Carbona Irrigation District, organized under the provisions of California Statutes of 1897, p. 254. (Deering's General Laws, Act 3854, p. 1792.) The proceeding is under Section 81-84, Chapter IX of the Bankruptcy Act of 1898 as amended. 11 U. S. C. A. Sec. 401-404.

The jurisdiction of this Court in this appeal is under Sections 24 and 25 of the Bankruptcy Act of 1898, as amended June 22, 1938. (11 U. S. C. A., Sec. 47-48.)

Appellant, who is a creditor of Banta Carbona Irrigation District, filed his answer and objections to petition (R. 32) and his proof of claim. (R. 90.)[1]

[1]References are to the Record in case No. 9591 unless otherwise indicated. The Record in case No. 9591 is a part of the Record on Appeal herein.

The petition was heard before the Honorable Harold Louderback, and an interlocutory decree approving the composition plan was filed January 6, 1940. (R. 108.) Final decree discharging appellee was entered by the Honorable Martin I. Welsh on November 26, 1943. (R. 4, Case No. 10,670.) Notice of appeal was filed December 20, 1943. (R. 13, No. 10,670.)

STATEMENT OF THE CASE.

Throughout this brief Banta Carbona Irrigation District will be referred to as the "appellee", and the appellant who was respondent below, will be referred to as the "appellant".

Appellee is an instrumentality of the State of California, organized in 1921, under the Cal. Stat. 1897, p. 254 (supra), and embraces 14,379 acres, adjoining the City of Tracy.

Appellee acquired its water rights, pumping and canal system with money borrowed under three bond issues, aggregating $1,134,060, due serially 1940 to 1967, with no option of prior payment. Bonds owned by appellant mature serially 1948 to 1963, with 6% interest. (R. 91.) Appellee has steadfastly refused to pay appellant any of the interest due on his bonds, since January 1, 1932. (R. 91.)

The plan of composition is described at R. 1.

At the time appellee filed this most recent petition, 100% of the "assenting" bonds were under the control of the Reconstruction Finance Corporation, the original bondholders having long before accepted the cash offer made for their bonds by the District. (R. 29.) In 1934, acting under the authority of Chap. 25, Title 2, paragraph 36, 48th Statutes, 49, the RFC granted appellee a loan, not to exceed $602,500. (R. 244.) On January 7, 1939 the petition involved in the instant case, was filed with the Court below, under 11 U. S. C. A. 401-404, based on the "assent" of the RFC alone.

In the District Court the proceeding was objected to by appellant for several reasons, as shown in appellant's opening brief in Case No. 9591 in this Court.

Interlocutory decree was entered and an appeal was taken from it to this Court. The mandate went down to the District Court on December 4, 1941. (R. 2, No. 10,670.)

The record on this appeal is short, so far as the proceedings subsequent to the entry of the interlocutory decree are concerned.

Perhaps the leading points raised in this appeal involve the authority of the Court, to restrain the grantee of a contract and trust obligation executed by a sovereign agency of the state, from recourse to proceedings in a state court to seek an accounting, as a *cestui que trust,* from public trustees, and to penalize a *cestui que trust* with a total forfeiture of his vested property rights, as those rights have been well settled by the highest state courts, unless he surrenders his bonds and accepts the compromise figure, "within twelve months from and after the date that this decree becomes final". (R. 10, No. 10,670.)

Also the question is raised of whether "assents" to a plan survive the cancellation and surrender of the bonds, on which their efficacy as consents rested, and in the light of the language of the recent *Faitoute v. Asbury Park* case (316 U. S. 502), the constitutional question is presented.

The points in this appeal are as follows:

POINTS ON APPEAL.

The following points are made on this appeal. (R. 13, No. 10,670.)

(Title of District Court and Cause.)

STATEMENT OF POINTS AND ASSIGNMENT OF ERRORS.

The appellant J. R. Mason makes the following assignment of errors which he avers occurred during the determination of this cause and in the rendering of the decree and order appealed from, and states that the points on which he intends to rely in this appeal are the following:

1. The Court erred in entering the final decree and should have dismissed the proceedings for the reason that all of the bonds involved in the composition except those of appellant and other minority holders were surrendered and cancelled before the entry of the final decree voluntarily. Reference is made to subsection (f), Section 403, 11 U. S. C. Distribution was made prior to the final decree and there was therefore no creditor whose consent to the plan of composition could form the basis of a final decree.

2. The provision in the final decree requiring creditors to surrender their bonds or be forever foreclosed from collecting anything upon them within a period of 12 months from the entry of the final decree is void and not authorized by the bankruptcy act; no time limit should be made and furthermore such funds as may not be paid out belong to the creditors and not to the debtor. The final decree is void and not authorized by the Bankruptcy Act but violates state law.

3. The hearing on the final decree was without due notice to the creditors.

4. The final decree so far as it cancels, annuls, and holds for naught appellant's bonds exceeds the jurisdiction of the District Court in accordance with Chapter IX of the Bankruptcy Act.

5. The final decree takes the property of appellant unlawfully and in violation of the Fifth Amendment to the Constitution of the United States and in violation of the Constitution of the State of California.

6. The District Court had no jurisdiction of the matters nor the parties at the time of the entry of the final decree.

7. The final decree violates subsection (c) of Section 403, 11 U. S. C. A. because in "cancelling and annulling" the bonds at bar it operates to reduce the direct taxes lawfully payable by the private holders of land, which are mandatory under the contract in the bonds of appellant, and thus it "interferes" (comes into collision) with the exercise and enforce-

ment of political and government powers, explicitly prohibited by the Act.

8. The final decree violates Clause 2, Section 3, Article 4 of the Constitution of the United States, in that it operates to "prejudice * * * claims of a particular state".

9. The final decree is unconstitutional in that it violates the provisions of Article IV, Section 31, Article VI, Section 13 and Article XI, Section 13 of the Constitution of the State of California, because it serves to appropriate property belonging to the state, designated a "public trust", and dedicated irrevocably for the "uses and purposes" of the Irrigation District Act, one of which purposes is the fulfillment of the contractual obligation under the bonds owned by appellant, and which property it releases for the unlawful enrichment of persons with no legal or equitable right in or claim to it. The public derives no benefit whatsoever from taking.

Dated, January 11, 1944.

J. R. Mason,
Appellant in Propria Persona.

(Endorsed): Filed January 12, 1944.

ARGUMENT.

FIRST PROPOSITION: THE PROVISION ORDERING APPELLANT TO ACCEPT THE COMPOSITION SUM NAMED WITHIN TWELVE MONTHS AFTER FINAL DECREE OR BE ENTITLED TO NOTHING AND RESTRAINING APPELLANT IN THE RIGHT TO PROSECUTE AN ACTION IN THE STATE COURT TO REQUIRE PUBLIC OFFICIALS TO ACCOUNT, AS TRUSTEES, ASSUMES THAT THE STATE COURT WILL INCORRECTLY DETERMINE THE RIGHTS OF THE PARTIES, AND IS A RESTRAINT NOT AUTHORIZED BY ANY SECTION OF THE BANKRUPTCY ACT.

The final decree provides that the money which appellant is ordered to accept for his bonds and which is deposited with the Court must be disbursed within a period of twelve months from the date the decree becomes final, or the money must be invested in the 4% bonds now held by the RFC, which are to be "forthwith cancelled and returned to the petitioning district". Thus, unless appellant surrenders his bonds within 12 months, he is ordered to have nothing, and is "forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof". (R. 11, No. 10,670.)

In view of the late California opinions, holding that appellee is a "public trust", and fully construing its powers and duties in the *El Camino v. El Camino* case (12 C. (2d) 378), and *Moody v. Provident* case (12 C. (2d) 389), appellee is a public trustee, subject to the rule as declared in the very recent *In re Leight & Co.* case, 139 F. (2d) 313, as follows:

> "Bankruptcy Court which in 1930 had confirmed bankrupt's composition whereby assets

were transferred to trustees *had no jurisdiction to restrain proceedings in state court* to require trustees to account even if state court proceedings involved a collateral attack upon the rights of one trustee, since *federal court can not assume that state courts will incorrectly determine rights of the parties.* Bktcy. Act §13, 11 U. S. C. A. §31." (Emphasis ours.)

In view of appellant's vested property right, as a *cestui que trust,* in the tax and rent revenues collected and to be collected by appellee, and the law in this regard, as well settled by the highest State Court in the *Provident v. Zumwalt,* 12 Cal. (2d) 365, and *Moody v. Provident* case, supra, the final decree, cancelling and annulling the bonds, conflicts with the recent *Comm. of Kentucky v. Farmers Bank & Trust Co.* case, 139 F. (2d) 266, in which case the Court said:

"Liens created or recognized by laws of United States or any State for taxes and debts owing to the U. S., or any State or subdivision thereof are valid against a trustee in bankruptcy. Bktcy. Act, § 67, sub. b., 11 U. S. C. A. § 107, sub. b."

The bonds involved in the *Getz v. Nevada I. D.* case, 112 F. (2d) 497, in this Court, differed basically from the bonds here, in that there is no provision in the present bonds, nor in any statute pursuant to which they were issued, that authorizes any majority to coerce a minority. This was decided in the *Selby v. Oakdale* case, 140 C. A. 171, declaring Section 113, Stat. 1933, page 800, unconstitutional.

Dundee v. Pressgrove, 15 So. (2d) 448 (Fla.).

Because of the clarification in the *Faitoute v. Asbury Park* case, 316 U. S. 502 at page 508, where the Supreme Court holds that the jurisdiction under Ch. IX may be exercised "* * * only in a case where the action * * * is authorized by state law", and because there is nothing in the State law authorizing the restraint embodied in the final decree, it is respectfully submitted that the decree ought to be modified.

SECOND PROPOSITION: THE COURT ERRED IN ENTERING THE FINAL DECREE AND SHOULD HAVE DISMISSED THE PROCEEDINGS FOR THE REASON THAT ALL OF THE BONDS INVOLVED IN THE COMPOSITION EXCEPT THOSE OF APPELLANT AND OTHER MINORITY HOLDERS WERE VOLUNTARILY SURRENDERED AND CANCELLED BEFORE FINAL DECREE. THEREFORE, LACKING THE CONSENTS REQUIRED FOR EVERY STEP OF THE PROCEEDINGS, NO JURISDICTION UNDER CHAPTER IX SURVIVES THE CANCELLATION OF THE OBLIGATIONS.

Appellee reveals (R. 7, No. 10,670) that before filing of the petition for final decree, all of the $1,040,-060 "assenting" bonds, and warrants in the amount of $56,895.93 had been "cancelled and delivered to the petitioning district in exchange for its new bonds equal to the amount paid for the old bonds or obligations so purchased".

Section 1625, Civil Code lays down a rule of substantive law, which applies clearly to the *"fait accompli"* shown above. It provides as follows:

"The execution of a contract in writing, whether the law requires it to be written or not, super-

sedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument."

Section 1855 of the Code of Civil Procedure provides:

"There can be no evidence of the contents of a writing other than the writing itself."

All parties knew that the obligation under the bonds issued by appellee, whether original or refunding bonds are the usual general obligation of the irrigation district, according to the laws applicable at the time the bonds are issued.

Therefore when an obligation is evidenced by a writing (in this instance the new bonds accepted by RFC before final decree) such writing is presumed to be the complete and final expression of the understanding of the parties. (10 *Cal. Jur.* 855.)

The great strictness with which the California Court construes the limitations in the obligation in writing with a similar district, was made clear in

Meyerfeld v. So. San Joaquin, 3 Cal. (2d) 409.

The only provision in the amended Ch. IX governing distribution, whether of new securities or cash, is contained in subdivision (f), of Section 403. Appellee will not, we believe, deny that, lacking the consent of appellee, the court would be without any power to issue a final decree. The mere fact that appellee gave its consent in this instance is no sufficient answer. As to whether the RFC could have withdrawn its consent, after the interlocutory decree, and

refused to consent to the final decree is immaterial. When the RFC took actual delivery of the refunding bonds, and let the original bonds upon which their consent rested, get into appellee's possession and be cancelled, the creditor consent *ipso facto* expired, as fully as though it had never existed.

There has been much conflict as to the true status of original bonds, when held by the RFC as "consenting" creditor in other proceedings, similar to this one. This Court has ruled that the old bonds so held by the RFC may be enforced for full value. *West Coast v. Merced,* 114 F. (2d) 654. In the Fifth Circuit that Court ruled in *Evergreen Farms v. Willacy,* 124 F. (2d) 1, that the RFC held the old bonds as collateral for its loan to the District. (Cert. denied, 316 U. S. 687.) While, in the case of *Abraham v. Hidalgo County,* 125 F. (2d) 829, the Fifth Circuit Court held that immediately the RFC acquired the old bonds from the prior holders, the old bonds were cancelled, even though the refunding bonds had not been delivered.

See, also,

McClain v. Comm., 110 F. (2d) 878, affirmed in 311 U. S. 527.

Subsequent transactions, such as that disclosed in the *Glenn Colusa v. Mason* case, No. 10,529, pending in this Court, where the District found it possible to borrow money at 3¼%, in lieu of the 4% rate with the RFC, was able to change its mind, after the interlocutory decree had become final, and refuse to

deliver the 4% bonds, as provided in the plan of composition which had been approved in the interlocutory decree, and which change of mind on the District's part the RFC could not object to, would seem to leave little doubt that the true status of the old bonds was that decreed in the *Abraham v. Hidalgo County,* 125 F. (2d) 829, case, supra. A petition for writ of certiorari was also sought from the U. S. Supreme Court in this *Abraham v. Hidalgo Co.* case, and denied. In the petition of petitioners, question VI on page 15, counsel for Mr. Abraham squarely presented the question, as follows:

> "Does the RFC under its regulation standard loan form contract used in making loans to municipalities * * * hold the securities turned over to it pending the issuance of new securities as a pledge, or are they automatically cancelled when they come into the hands of the RFC, or does RFC hold the title thereto with authority to enforce them 100% of their face value?"

The Court of Appeals for the Fifth Circuit has adhered to the ruling it laid down in this *Abraham* case, supra, in its recent decision in the case of *Wright v. Coral Gables,* 137 F. (2d) 192. The City of Coral Gables appealed the ruling, and its petition was granted by the Supreme Court, which Court on March 13, 1944 by a vote of 4 to 4 sustained the Court below.

The lack of authority to issue any order or decree, absent the consent of the debtor, in proceedings under

Chapter IX, was very carefully discussed by the Circuit Court in the following cases.

Leco Prop. v. Crummer, 128 F. (2d) 110;
Ware v. Crummer & Co., 128 F. (2d) 114;
Spellings v. Dewey, 122 F. (2d) 652.

These cases appear to confirm the soundness of the opinion expressed by Giles J. Patterson, Esq., former chairman of the American Bar Assn., Municipal Law Section, writing in the Univ. of Pennsylvania Law Review, Vol. 90, No. 5, as follows:

> "One of the most important differences between Sec. 303 and Sec. 403 is found in subdivisions (e) and (f) of the new law * * * The power of the Federal Court under the act is very different from that which it possesses in proceedings, instituted by individuals, or private corporations. *This limitation upon its power is necessary and applies to every step in the proceedings.* The court can make no order that will even indirectly interfere with the sovereignty of the State, nor compel action by the debtor. The *Bekins* case did not reverse the principle of constitutional law announced in the *Ashton* case. It reaffirmed it.

Some have assumed that the Interlocutory Decree may authorize the debtor to *make distribution* of the new securities. The act provides otherwise. *Distribution can be made only by the court in its final decree.* Distribution made *before* final decree is at the risk of all parties. If inequity or unfairness result from distribution *before* a *final* decree of confirmation *has been made,* creditors who accept the new bonds will not be pro-

tected by the Interlocutory Order." (Emphasis ours.)

Therefore, absent the requisite creditor consent for "every step in the proceedings", jurisdiction to issue the final decree was fatally lacking, for the same reason that the absence of consent by the debtor to the final decree would have made the Court below unable to issue the final decree, it is respectfully submitted that the Court was not authorized, and the decree ought to be set aside.

THIRD PROPOSITION: THE FINAL DECREE VIOLATES CLAUSE 2, SECTION 3, ARTICLE 4 OF THE CONSTITUTION OF THE UNITED STATES IN THAT IT OPERATES TO "PREJUDICE * * * CLAIMS OF A PARTICULAR STATE".

The "claims" annulled by the final decree are a gift of property which the State Court has ruled is "owned by the State".

El Camino case, 12 Cal. (2d) 378;
Anderson-Cottonwood case, 13 Cal. (2d) 191.

The fact that appellant has a vested right in and to such State property as a *cestui que trust,* by virtue of the contractual obligation in the bonds, does not alter the character of the property which the final decree gives away to private interests, once the decree has become final, and the bonds have been "cancelled and annulled". The beneficiary of this final decree will not be the public interest, but only the private holders of land-titles, who will, after the

bonds are cancelled, be enabled to appropriate as their property more of the future economic rent of the land, after taxes, as unearned increment which they will be able to capitalize into higher prices for title deeds to the land.

In its recent *Mercury Herald v. Moore* case (138 P. (2d) 673), after rehearing the Supreme Court reversed a very long line of cases, and ruled "* * * there is no contract relationship between the taxpayer and the state".

The property taken from appellant by the final decree, being property belonging to the State, the State is prohibited from giving it to private interests with no legal or equitable claim to it. Also, no Court of Congress can make a gift of State property to private interests, whether directly or indirectly, and appellee is urged to cite any provision in 11 U. S. C. A. 401-404 or any other chapters of the bankruptcy statutes authorizing the gift of State property to any private interest.

In its decision of May 27, 1940, in the *S.E.C. v. U. S. Realty & Impt. Co.* case (310 U. S. 434), the Supreme Court, speaking through Mr. Justice Stone, said:

> "A court of equity may in its discretion in the exercise of the jurisdiction committed to it grant or deny relief upon performance of a condition which will safeguard the public interest. It may in the public interest, even withhold relief altogether, and it would seem that *it is bound to*

stay its hand in the public interest when it reasonably appears that private right will not suffer." (Italics ours.)

The State of California is prohibited from making a gift of State property to private parties by Art. IV, Section 31 of its Constitution. The State Supreme Court has decided that all property and revenues of a California Irrigation District are property "owned by the State". Therefore, it is submitted that the final decree operating as it does to release private interests from their obligation to pay, whether as taxes or rent, the amounts called for in the bonds belonging to appellant, does in both legal and practical effect operate to "prejudice * * * claims of a particular State", prohibited by Clause 2, Section 3, Art. 4 of the U. S. Constitution, and it ought to be modified.

FOURTH PROPOSITION: THE STATE LEGISLATURE CAN NOT AUTHORIZE UNDER THE POLICE POWER OF THE STATE THE CREATION OF A CONTRACTING AGENCY AND PERMIT THE CONTRACTING OF OBLIGATIONS AND BY THE SAME POWER DESTROY ITS CONTRACTS AND ABOLISH ITS OBLIGATIONS WITHOUT VIOLATING ARTICLE 1, SECTION 10 OF THE FEDERAL CONSTITUTION.

In the light of the clarifying language disclosed in the *Faitoute v. Asbury Park* case, supra, stating that the jurisdiction of the Federal Court in proceedings instituted under Chap. IX is exercised "* * * only in a case where the action * * * is authorized by State law", it is necessary to consider whether the State has or could "authorize" the abolition of the

obligation of contract in the bonds owned by appellant, by any *ex-post facto* statute.

Appellee will not, we believe argue that there was anything in any statute at the time the bonds owned by appellant were issued which permitted the State to impair the contract.

Shouse v. Quinley case, 3 Cal. (2d) 357.

The State law, authorizing appellee to borrow money from the Federal government, is found in Vol. I, Deering's General Laws, 1937, page 1896, which is many years after appellants bonds were issued. That statute is printed in full text in the appendix, page v, of appellant's opening brief, case No. 9591 in this Court, and does not purport to repeal any obligation of contract in prior issued bonds.

The so-called State consent act is Cal. Stat. 1939, Chap. 72, but it does not purport to amend or alter State law which created appellee and the contracting of the obligation in the bonds owned by appellant. Furthermore there is no hint or suggestion in the amended Ch. IX of the Bankruptcy Act that jurisdiction by the Bankruptcy Court makes State consent a prerequisite. Nothing said in the *U. S. v. Bekins* case (304 U. S. 27) modified the principle stated in the *Ashton* case (298 U. S. 513), as follows:

> "Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted."

That the Legislature did not intend to authorize Congress to repudiate the obligation of contract in

the bonds here, is made clear by the validation of the bonds subsequent to Ch. 72, Stat. 1939, by the Legislature in Stat. 1940, 1st E. Sess., page 40.

In *In re Mead Haskell Co.,* 47 F. Supp. 997, the Court held that decisions of the California Court construing a taxing statute are conclusive on the U. S. District Court. The Irrigation District Act of California, taken by the four corners, is a taxing statute.

An attempt by the Tennessee Legislature to permit citizens to vote, without regard to the payment of poll taxes, was held unconstitutional in the recent case of *Biggs v. Beeler,* 173 S. W. (2d) 144, by the Tennessee Supreme Court, although neither the State nor any of its local units had borrowed money on the pledge that such taxes would be levied and collected to fulfill the obligations.

If it is repugnant to the Constitution to enact the Legislation annulled by the *Biggs v. Beeler* case, supra, where no contractual obligation was involved, *a fortiori* reason indicates that the Legislature exceeded its authority in enacting Statute 1939, Ch. 72, if it did intend to destroy the obligation of contract in the prior issued bonds owned by appellant, or authorize a Court of the Congress to do so.

The California Court in the *Rancho Santa Anita v. City of Arcadia* case (20 Cal. (2d) 319) recently said:

> "In absence of constitutional or statutory limitations amount of revenue necessary for needs

> of a municipality is within sole discretion of legislative authorities, *and this discretion is not subject to judicial interference."* (Italics ours.)

In *Tolman v. Clark Co. Dr. Dist.,* 62 F. (2d) 226, the Court said:

> "It is inconceivable that another court should attempt or be permitted to perform the duties which are clearly imposed upon the court that created the district, appointed the Commissioners and authorized the issuance of the bonds * * * Cyc. of Fed. Procedure, §§ 34, 35."

In the *People v. Adirondack Ry.* case, 160 N. Y. 225, 54 N. E. 689 (affirmed in 176 U. S. 335), the New York Court held that there are powers belonging to the States that are

> "* * * rights inherent in the State as a sovereign * * * They belong to the State because it is a sovereign, and they are a necessity of government. The State cannot surrender them, because it cannot surrender a sovereign power."

See also,

Skaggs v. Comm., 122 F. (2d) 721 (cert. denied Mar. 2, 1942, No. 866).

It is respectfully submitted that there has not been and could not be any consent by the State to impair or destroy the contract in the bonds belonging to appellant, without a violation of law.

Unless appellee argues that the State abdicated its police, taxing and borrowing power in Stat. 1939, Chap. 72, and submitted to the control by Congress of

those sovereign State powers appellee can not we believe contradict appellants' position, which is that in the exercise of the borrowing and taxing power confided by the Legislature to appellee it is competent for the State to empower appellee to enter into a contract which it intends as an assurance of protection to its grantee, appellant here.

Indiana ex rel. Anderson v. Brand, 303 U. S. 95.

If jurisdiction to issue the final decree is dependent upon Stat. 1929, Chap. 72, that California statute permits an unconstitutional impairment of the obligation of appellant's trust contract with the State of California in violation of Art. 1, Sec. 10 and the Fifth Amendment of the Constitution of the United States.

Fletcher v. Peck, 6 Cranch (U. S.) 87;
Worthen v. Kavanaugh, 295 U. S. 56;
Davis v. Gray, 16 Wall. (U. S.) 203.

It is submitted that Stat. 1939, Chap. 72 does not purport to repeal any statutory provision of the law controlling the powers and duties of appellee, nor to authorize a Court of the Congress to permit the violation or circumvention of those statutes.

The final decree here, as construed and applied by the District Court, will have the result both legally and practically of permitting appellee to escape its duties to levy and collect the taxes required by the contract in the bonds owned by appellant, because the cancellation and destruction of the bonds permits appellee to levy future taxes at rates below those that would be

mandatory, absent the final decree. Attempts to destroy similar obligations of contract were denounced in the following cases:

Shouse v. Quinley, 3 C. (2d) 357;
Selby v. Oakdale, 140 C. A. 171;
L. A. Co. v. Rockhold, 3 C. (2d) 192;
Pryor v. Goza, 172 Miss. 46;
Enterprise v. State, 156 Ore. 623;
Home Bldg. v. Blaisdell, 290 U. S. 398;
Wood v. Lovett, 313 U. S. 362.

In the *Twining v. New Jersey* case, 211 U. S. 79 at page 105 the Supreme Court said:

> "* * * in a free representative government nothing is more fundamental than the right of the people through their appointed servants, to govern themselves in accordance with their own will, except so far as they have restrained themselves by constitutional limits specifically established, and that in our peculiar dual form of government nothing is more fundamental than the full power of the State to order its own affairs and govern its own people, except so far as the federal Constitution expressly or by fair implication has withdrawn that power. * * * Under the guise of interpreting the Constitution we must take care that we do not import into the discussion our own personal views of what would be wise, just and fitting rules of government to be adopted by a free people, and confound them with Constitutional limitations."

In the *Mugler v. Haus* case, 123 U. S. 623 that Court said:

> "The courts are not bound by mere forms, nor are they to be *misled by mere pretences.* They

are at liberty to *look at the substance of things, whenever they enter upon the inquiry whether the Legislature has transcended the limits of its authority.*

If, therefore a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, *or is a palpable invasion of rights secured by fundamental law,* it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." (Italics ours.)

FIFTH PROPOSITION: THE FINAL DECREE, AS APPLIED, DEPRIVES APPELLANT OF PROPERTY EMBODIED IN THE BONDS OWNED BY APPELLANT, IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS OF THE FEDERAL CONSTITUTION, APPELLANT BEING ENTITLED TO HAVE EXERCISED AND ENFORCED THE LAWS IN EFFECT AT THE TIME OF ISSUANCE OF THE BONDS.

The final decree is, in the light of late California decisions, a gift of State property to private persons with no legal nor equitable right, title or interest in or to it. The property so given is designated by State law and decisions a public trust, dedicated for the uses and purposes of the Act, one of which purposes is the fulfillment of the trust obligation embodied in the bonds owned by appellant, without time limit.

Provident v. Zumwalt, 12 Cal. (2d) 365;
Moody v. Provident, 12 Cal. (2d) 389;
Anderson-Cottonwood v. Klukkert, 13 Cal. (2d) 191.

It is well settled that the interpretation and effect given by the California Court to the statutes creating appellee and construing appellee's powers and duties, and the obligation of contract embodied in the bonds owned by appellant, is controlling and conclusive upon the Federal Courts.

Davidson v. New Orelans, 96 U. S. 97;
Murray v. Charleston, 96 U. S. 432;
Fallbrook I. D. v. Bradley, 164 U. S. 112;
French v. Barber Asphalt Paving Co., 181 U. S. 324;
Milheim v. Moffat Tunnel I. D., 262 U. S. 710;
Roberts v. Richland I. D., 289 U. S. 71;
Chesebro v. Los Angeles County Flood Control Dist., 306 U. S. 459;
Faitoute v. Asbury Park, 316 U. S. 502;
Arkansas Corp. v. Thompson, 313 U. S. 132;
Toole Co. I. D. v. Moody, 125 F. (2d) 501;
Lyford v. State of N. Y., C. C. A. 2, decided Feb. 9, 1944, 12 U. S. L. W. 2453;
Brown v. Gerdes, No. 183, decided Feb. 7, 1944 by Supreme Court of U. S., 12 U. S. L. W. 4173.

In the *Elder v. Wood* case, 208 U. S. 226 it was held, and has since we believe been steadfastly adhered to, that where a claimed federal right involves a question of construction of a State statute, and the State Court holds that the right involved is not property belonging to the United States, the construction of the State statute and the conformity to it of the proceedings are questions exclusively for the Su-

preme Court of the State and the Supreme Court of the United States has no authority to review the determination.

The Court of Appeals for the 8th Circuit in the *Bauman v. Sheehan* case, on Feb. 14, 1944 (12 U. S. L. W. 2480) reaffirmed this rule of immunity, saying:

> "Cases in the Federal Courts holding that there was a general power in a court of bankruptcy to revise state taxes assessed or levied on the property of the bankrupt can not now, in view of the decision of the Supreme Court in Arkansas Corp. v. Thompson, 313 U. S. 132, be accepted as controlling."

In the very recent *Brown v. Gerdes* case (12 L. W. 4173, No. 183, decided February 7, 1944) Mr. Justice Frankfurter, in his concurring opinion, said:

> "For the supremacy clause does not give greater supremacy to the Bankruptcy Court over the free scope of the States to determine what shall be litigated in their courts and under what conditions, than it gives with reference to rights directly secured by the Constitution, such as those guaranteed by the full faith and credit clause."

The final decree as applied by the Court below deprives appellant of property embodied in the bonds belonging to appellant, in violation of the 5th and 14th Amendments of the Federal Constitution, appellant being entitled to have exercised and enforced the laws in effect at the time of issuance of the bonds, which laws provided for mandatory annual tax levies without any limitation as to rate or time until the funds needed to fulfill the continuing trust obligation are collected, and notice to that effect has been given.

In its decision of January 31, 1944, in the *Davies Warehouse Co. v. Bowles,* No. 112, case (12 U. S. L. W. 4154), the Supreme Court said:

> "It is a much more serious thing to adopt a rule of construction, as we are asked to do here, which precludes the *execution* of State laws by State authority in a matter normally within the State power. The great body of law in this country which *controls* acquisition, transmission and transfer of property, and defines the rights of its owners *in relation to the State* or to private parties, is found in the statutes and decisions of the State. *Mangus v. Miller,* 317 U. S. 178; *New York C. & St. L. RR. v. Frank,* 314 U. S. 360; *U. S. v. Okla. Gas & El. Co.,* 318 U. S. 206." (Italics ours.)

CONCLUSION.

There is perhaps no law in this Nation that has been more persistently and implacably resisted and attacked than the law creating appellee and authorizing the exercise of the taxing and borrowing powers confided to appellee. Especially is this true since these California districts elected to collect their necessary revenues as permitted by Stat. 1909, p. 461 (now Sec. 35), the constitutionality of which statute was again sustained by this Court in its very recent *Wells Fargo Bank v. Imperial I. D.* case, 136 F. (2d) 539.

Differing basically from the ordinary *ad-valorem* taxes on local property, the taxes levied by appellee are in no respect taxes upon the land, nor upon buildings or any improvements, but only on the value of land. A tax on land, that is a flat per acre tax, would fall on all land equally. Such a tax, which disregarded fertility, location and other advantages would fall on the land user, as user, and constitute a condition on the use of land, from which there could be no escape. But taxes levied on and in proportion to the value of land fall wholly on the land-title owner, as owner, and can not be shifted to a user.

Pollock v. Farmers L. & T. Co., 157 U. S. 429, 158 U. S. 601.

Thus, those holding poor land need pay only a small fraction as much, per acre to support appellee as the holders of the valuable land. These taxes, being levied strictly in proportion to benefits received by the land held by each taxpayer, are not and can not be a burden on the land user, as user. It is made the duty of the district assessor, under Section 35 of the Act, to assess each tract of land "at its full cash value", while Section 38 affords opportunity for hearings on objections to the assessed valuation fixed by the assessor on any land, by the taxpayer.

John Stuart Mill writes:

> "Rent is the effect of a monopoly. The monopoly is a natural one, which may be regulated, which may even be held as a trust for the community, but which can not be prevented from existing."

California law guarantees appellee the first lien on the rent, for any tax not voluntarily paid by the land-

title holder, when due. This lien entitles appellee to an "absolute title for all purposes", free from any mortgage or other private lien, and exempt from taxation as long as appellee retains the title. Appellee is authorized to administer the land as a beneficent landlord, and to receive the "rents, profits and issues" as long as may be necessary to fulfill its trust obligation in the bonds belonging to appellant. That all land or other property of appellee, no matter how acquired or for what purpose used, is tax-exempt was reaffirmed by the California Court in the recent *Metropolitian Water Dist. v. Riverside County,* 21 C. (2d) 640 case, in which the State Court ruled that districts created under the same law as appellee are not a "municipal corporation", but a "State agency", and clearly distinguished the two.

Manifestly, the consent of all creditors, plus the consent of appellee could not authorize a federal Court to order the levy or collection of taxes in disregard of State law. Appellant submits that this immunity is not dependent on whether the federal Court order would operate to increase or to decrease the rate of tax provided for by State law. Clearly the final decree here, if it stand, will serve one purpose and only one. It will permit appellee to levy taxes at rates below those that it would have to levy if appellant's bonds are not destroyed.

The question is not whether Chap. IX prohibits the loan appellee procured from the RFC many years ago. Appellant does not question the right of appellee to issue the bonds it has issued and delivered to the RFC to satisfy the RFC loan. That transaction was

a *"fait accompli"* before the final decree was presented to the District Court for its signature.

The real question is, "is there any law on the statute books which authorizes either by express words or necessary implication, the final decree of the District Court, which "cancels, annuls and holds for naught" the contract in appellant's bonds, and/or the drastic restraint and forfeiture provisions in the decree, as they involve the property belonging to appellant?"

Although a man may give away his property, or sell it to the RFC at any figure he chooses, or even take his own life without penalty, no one of our sovereign States may kill itself, nor consent to any control of its reserved sovereign powers by another sovereign. The possibility of death through insolvency, disease, suicide or an act of God never has and never will justify murder.

There has been an unmistakable trend in recent years to substitute for our traditional system of dual sovereignty, a system under which the States and their local units of government depend more and more on federal grace. This inevitably paves the way for the centralization of new powers in the federal branch of our government. There may be some who think the States should not survive as sovereign and independent. It would appear that pressures are at work, which if not resisted with faces of flint will compel the abolition of our traditional dual sovereignty, which has for so long been the very warp and woof of our system of government, stemming from the conviction of those who drafted the Constitution that democracy

could not successfully hope to function in a single, all-powerful centralized government. This conviction springs from the teaching of all history, that freedom in a Nation as vast and heterogeneous as ours can not stand if the federal system of free and sovereign states is impinged.

> "One branch of the government can not encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule".
>
> *Sinking Fund Cases,* 99 U. S. 700, 718.

> "The attainment of a prohibited end may not be accomplished under the pretext of the exertion of powers which were granted."
>
> *U. S. v. Butler,* 297 U. S. 1, 68.

> "There can be no distinction between the several states of the Union in the character of the jurisdiction, sovereignty and dominion which they may possess and exercise over persons and subjects within their respective limits."
>
> *Ill. Cent RR. v. Ill.,* 146 U. S. 387, 434.

> "A statute valid as to one set of facts may be invalid as to another * * * a statute valid, when enacted, may become invalid by a change in the conditions to which it is applied."
>
> *Nashville, C. & St. L. RR. Co. v. Walters,* 294 U. S. 405, 415.

Although appellant contends that the final decree takes property that is lawfully his, in violation of law, there is involved in this case an even more im-

portant question, which has not been reversed by the Supreme Court of the United States, but which should be reversed or reaffirmed by that Court, as stated in the *Ashton v. Cameron County,* 298 U. S. 513 case, as follows:

> "Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted * * * The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of the state and national governments are many; but for a very long time this court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."

It is respectfully submitted that the final decree should be reversed.

Dated, San Francisco,
March 31, 1944.

J. R. MASON,
Appellant in Propria Persona.

(Appendices A, B and C Follow.)

Appendices A, B and C.

Appendix A

The White House
Washington, D. C.

October 21, 1943.

Mr. Oliver S. Warden,
President, National Reclamation Association,
Denver, Colorado.

My Dear Mr. Warden:

The Nation can be proud of the courage and foresight of those men who believed that great acreages of arid western lands could be reclaimed. The food from these lands is now sustaining our armed forces and saving thousands of other men and women at home and abroad from hunger.

For the sake of our returning sailors and soldiers, the Nation can also be grateful that the men who fought for reclamation combined their foresight with courage. They wanted to use the public domain to provide opportunities for life and usefulness for large numbers of independent farmers, so they wrote anti-land monopoly into the reclamation laws. They wanted the water to serve all, rather than to be held by a few, so they made it impossible for the few to garner all of its benefits. They wanted no speculators to reap all of the value of Government investment nor to burden the homesteaders with the weight of heavy mortgages, so they wrote anti-land speculation provisions into the basic law. They wanted no gifts from the taxpayers, but only an opportunity to pay back the money that was invested by the Government,

so they wrote definite terms of repayment into the laws. They stood on their own feet.

Together with the food now being produced, these are accomplishments for which the Nation and the soldiers may both be thankful, for in the great new land openings that will come shortly in the Columbia Basin—in the Central Valley of California and elsewhere—it will now be possible for the Nation to provide opportunities for homes and for honest, valuable work for some of our returning servicemen and demobilized soldiers of industry, under conditions which any working farmer would be proud to bequeath to his own son coming back from battle abroad. They will be the heirs of the wise provisions which were enacted to keep our farmers from becoming victims of Nature and of their fellow men.

I hope that the men from all the States who make up the membership of the National Reclamation Association will renew the great tradition which has made these results possible. I take pleasure in wishing them every success.

Sincerely yours,
FRANKLIN D. ROOSEVELT.

Appendix B

THE RECLAMATION PROGRAM TODAY AND TOMORROW

Harry W. Bashore, Commissioner,
Bureau of Reclamation, Washington, D. C.

Mr. Bashore: Thank you very much, President Warden.

In carrying on the duties and responsibilities of the position of Commissioner of the Bureau of Reclamation it is a great consolation to know that you have friends scattered throughout the western states who understand the responsibility and difficulties of your position. I assure you that while I am Commissioner it will have my best efforts and I hope that during my service as Commissioner that I may be able to contribute something in the development of the West.

I can tell you what the Reclamation program is today.

But I am neither a prophet nor a seer, and I cannot tell you precisely what that program will be tomorrow. You will have to take my word that the Bureau of Reclamation will go the limit in preparing for any task that is proposed for it. It is ready and willing to undertake a big job.

The first job of each of us is to make a one-hundred per cent contribution to the war. That, Reclamation is doing, by providing large quantities of food, huge blocks of power for war industries, and municipal water supplies for vital areas.

As for the Reclamation program of tomorrow, I can speak of our aspirations for serving the West and the Nation. When the clouds of war are rolled back, we anticipate participating in a vast postwar construction program which will be designed to cushion the impact of the transition from a war to a peacetime economy.

A primary consideration of this program will be the prompt employment on construction work for a substantial number of the 2,900,000 men from the 17 western irrigation states who will be demobilized from the armed forces and war industries. It will be equally important to provide settlement opportunities for tens of thousands of these men and their families who are entitled to a chance to establish self-sustaining farm homes on irrigated land. Many other thousands must be given permanent employment in industries which will be powered by electric energy from Reclamation dams.

Already a Senate committee has called upon the Bureau to produce a postwar public works program. We are at work on a preliminary outline that tentatively calls for an expenditure up to three billion dollars for the conversion, over a period of 5 to 10 years, of western water and land resources into the most useful channels. The development of this program is subject, of course, to limitations of funds and manpower. Before considering in greater detail the Reclamation program for the future, let us examine what the Bureau is doing today.

* * * * * * *

Today, the investment of the Federal government in facilities for the conservation and use of western water resources is at the high water mark of $870,000,000. The money thus expended, by itself, means little. The great dams that have been completed, the hundreds of miles of canals, and the fine power plants with their whirling generators, are excellent examples of our engineering skill, but in judging their final worth more vital considerations are involved.

What does count is what these great facilities are doing for the country in the national emergency. And what registers in the long run is what Reclamation projects will do for the West and for the people who will pay the bills and whose lives will be enriched because of this work.

Today, the Bureau's 52 operating projects are providing irrigation, power, or municipal water to western areas with a population of nearly 5,000,000 people.

* * * * * * *

The long-term objectives—farm homes where western families can be self-sustaining—are reflected in the 80,000 irrigated farms. These embrace 4,000,000 acres of land once desert.

In the face of these greatly enlarged food demands, the production on Reclamation projects takes on added significance. The potatoes grown this year will provide for the annual needs of 17½ million persons. The beans produced will serve 32 million, and the alfalfa, when translated into meat and milk, means a 12-month supply at current ration values for 9 million persons.

Reports from our irrigation projects in operation show that Reclamation farmers have gone to war in a real sense. Their activities in the production of three major crops illustrate the contributions they are making. The acreage of potatoes this year is 44½ per cent greater than in 1942. The bean acreage shows a gain of 26 per cent. Flax seed, also a vital commodity, is up 42 per cent.

The Bureau is and has been prepared to extend irrigation facilities to serve several million additional acres, but—and it is no secret—it has been hampered considerably by the diversion of critical materials to other war uses. Two years ago some people were convinced that the country's agricultural plant, as it then existed, was adequate for any emergency. My friend, John Haw, predicted at that time that the day would come when the nation would clamor for increased foodstuffs from the irrigated land of the West. Not only has this prediction come true, but the Bureau of Agricultural Economics has just announced that the food supplies for civilians will be less in 1944 than in this year.

Only recently we were given the green light on 13 projects through which we can extend irrigation service to nearly 800,000 acres by 1945, and to more than a million acres by 1946. If the Bureau is given clearance promptly on additional projects, it can serve, in three years, double the acreage now approved.

* * * * * * *

In planning and executing the postwar program for employment benefits, we are keeping in mind the

necessity for the most economic use of the land and water resources of the West. Although it is of the utmost importance to provide immediate work for returning soldiers, it is equally vital that the qualified veterans of World War II and the demobilized industrial workers shall have opportunities to become self-sustaining on western irrigated land.

As we go forward with the plans for postwar projects we are seeking ways and means to make the facilities we build do the greatest good for the greatest number. On the Columbia Basin project in Washington, the Bureau will have ready a definite development and settlement pattern that will pave the way for a new agricultural empire covering an area as large as the State of Delaware. On the Central Valley project in California, we are also giving attention to human and economic considerations. On the Yuma Mesa of the Gila project in Arizona, experiments are being conducted which will contribute to war food supplies and will help meet the demand for settlement opportunities on the large areas of public land in Arizona and California. Examination of the agricultural and other economic possibilities of the Missouri River Basin are being considered. Field work in the Colorado River, Columbia, and other basins is under way.

The present day requirements necessitate a re-examination of our concept of a balanced Reclamation program. For that reason increased emphasis is being placed on the land use, agricultural and settlement phases of Reclamation, on irrigation developments and on the marketing and influence of Reclamation power output on the future of the West.

Appendix C

House of Representatives.
Subcommittee on Bankruptcy.
Committee on the Judiciary.

Municipal Bankruptcy Compositions.
Hearings, March 1, 1937.
H.R. 2505, H.R. 2506, H.R. 5403.

Statement of W. R. Satterfield, Esq., Counsel,
Reconstruction Finance Corporation.

Mr. Satterfield: Mr. Chairman, I hardly think it is necessary for me to go into the matter of the necessity for this legislation in so far as the proposed bill will affect the business of the R.F.C. * * *

In June 1933 the Congress passed an Act known as section 36, part 4, of the Emergency Farm Mortgage Act, which was later amended. Under that Act the Corporation (R.F.C.) was authorized to make loans not to exceed $125 million for the purpose of reducing and refinancing the indebtedness of certain taxing agencies, local improvement districts named in the Act, which had projects, meaning drainage projects, or irrigation projects or levees, or a combination of these, that were devoted chiefly to the improvement of lands for agricultural purposes * * *

At the time of the decision of the *Ashton case,* which upset old section 80 of the bankruptcy law, there were some 60 cases which had bankruptcy suits pending called proceedings for the composition of their indebtedness * * *

Now, as the Chairman well said this forenoon, the real matter which the Committee is primarily interested in is the difference between the proposed acts and the old section 80, held invalid in the *Ahston case.*

While I believe there is a real difference, I must say the difference is not as plain as the curtain behind you. The decision in the *Ashton case* was a 5 to 4 decision and doubtless the learned Justice who wrote it was diligent to see that no large gaps were left open. But, I believe there is a clear distinction between H.R. 2505 and the old section 80 although the machinery or procedure for carrying it out is practically the same.

I think there is one salient point, probably the controlling point of difference which Mr. Wilcox did not mention this morning, although he is thoroughly familiar with that point, which is this: Old section 80 applied only to political subdivisions. Please get that firmly fixed in your minds, as it is important * * *

After the decision in the *Ashton case,* the Court of Appeals of the Ninth Circuit at San Francisco, dismissed an appeal from a bankruptcy decree involving the Imperial Irrigation District. That district secured a decree of debt composition in the court below, and that was appealed to the court of appeals by the dissenting bondholders. The court of appeals dismissed that appeal, and the district then filed a motion for a rehearing which was overruled. In overruling this motion the appellate court said that if the

petitioner is a political subdivision it cannot get relief because of the decision in the *Ashton case.* If it is not a political subdivision it cannot get relief because old section 80 applied only to political subdivisions. Now, if you will just keep that idea in mind and then read the prevailing opinion in the *Ashton case* you will see that was what the writer of that opinion must have had in mind * * * I think anyone who knows the facts will say that that premise was not well taken * * *

The (Ashton) opinion goes on to say that it is plain enough the respondent is a political subdivision of the State created for the local exercise of her sovereign powers and that the right to borrow money is essential to its operation * * *

With that premise, I think it can be well said that old section 80 applied only to political subdivisions. That being true, and if the present bill, H.R. 2505, does not apply to political subdivisions, then I say to that extent there is a clear distinction between it and old section 80. It is sometimes a difficult matter to determine just what a political subdivision is * * *

As stated, if H.R. 2505 does not apply to political subdivisions then there is a clear distinction between it and old section 80.

There is one other point I want to mention before reading the changes suggested. As I take it, most of you gentlemen are lawyers. All of us know that these local improvement districts and even cities and towns, have been sued in the Federal courts time out of mind without consent of the State.

Now, the precise point is this: The obligations often involved in these suits and, as one of the committee said this morning, are issued by political subdivisions having corporate entities with the right to sue and be sued. And whether or not Federal courts have jurisdiction of these cases is no longer an open question where the indebtedness sued on was incurred by political subdivisions in the exercise of their proprietary or business rights * * *

The Supreme Court of the U. S. has recently said that Congress has not yet sounded the depth of its authority under the bankruptcy clause of the Federal Constitution, or words to that effect. So, if that be true and since H.R. 2505 will not apply to political subdivisions, if changed as suggested, not only would that distinguish this bill from the old section 80, but would leave the road open to Congress to pass the bill if it chooses to do so * * *

Mr. Zimmerman: I would like to ask one question before you leave H.R. 2505. In a State like Missouri, where the statute authorizes the formation of drainage districts, where the matter has been finally adjudicated by not only the State courts but the Supreme Court of the U. S. that these are appropriate agencies for exercising governmental functions, where the status has not been declared by the constitution of the State, what would you say under the amendment which you offer here would be the status of the districts in Missouri in case they would come up for a loan by the R.F.C.?

Mr. Satterfield: Here is my answer to that, Mr. Zimmerman * * * Now, knowing your situation in

Missouri, and having that in mind, I wrote that provision in the belief, or hope, it might reach the situation. If it does not, and if the Congress has no power under the bankruptcy clause of the Constitution to reach agencies, which are technically called political subdivisions, although the debts are payable out of taxes or assessments, just as I have stated, apparently your Missouri districts are helpless. I have thought about it a lot, and that is all the consolation I can give you.

I am trying to establish a clear distinction between the decision in the *Ashton case* and H.R. 2505. I do not take much stock in all this talk about packing and unpacking the Court, the changing of minds and things of that kind, some of which have been mentioned here. I have tried to consider this bill from the standpoint that the Court ultimately passing on its validity would likely follow the rule in the *Ashton case* * * *

March 10, 1937.

Statement of Hon. J. Mark Wilcox, a Representative in Congress from the State of Florida.

Mr. Wilcox: As suggested to the subcommittee when we adjourned last week, I rewrote the bill (H.R. 2505) to include the suggestions made by Mr. Satterfield and Mr. Giles J. Patterson. The new bill is No. 5403, and I believe copies of it have been distributed * * *

I will deal, first, Mr. Chairman, with the suggestions made by Col. Satterfield in his testimony * * *

The principal difference and the principal objective sought in the new section 81 is to group the various classes of districts and agencies which shall be made subject to the act. In other words, what we are attempting to do here is to segregate them into classifications so that the courts in passing upon the act may determine that drainage or levee or reclamation districts, for example, are the proper subject matters of bankruptcy. Whereas, it might decide that a local sewer, paving or sanitary district is not a proper subject of bankruptcy, or vice versa. So, by grouping them into those different groups, we have undertaken to set them up in such a form that the court can pass upon them as separate and distinct groups and districts rather than to lump them all into one section.

Now, there has recently been filed in the Supreme Court a petition for certiorari of the Ninth Circuit Court of Appeals on behalf of a California (Waterford) Irrigation District. They have filed with the application for certiorari, which, by the way, was filed on February 24 and not yet been disposed of—they have filed a most interesting brief, and in their brief they have classified the various districts and the various communities covered under the original municipal bankruptcy bill, and they have pointed out in here very clearly that there are different sorts of districts, some of which perform one kind of function, and some of which perform another, and that the decision in the *Ashton case,* being based on a district in Texas, where their constitution makes it an integral part of the State government, would not apply to a similar district located in California, where an

altogether different situation with reference to their State constitution and State laws applies * * *

Mr. Chandler: Your point is, if it should be held by the highest court of a State that one of these districts was not a political subdivision of that State, but was an agency of the taxpayers or members of the district, it would not be a political subdivision, and that decision would control the character of the district?

Mr. Wilcox: Yes, quite so.

"The Financing of Development Works."

Being an excerpt from the Report to the Parliamentary Public Works Committee of the State of Victoria, Australia, by Mr. Lewis R. East, Chairman, State Rivers and Water Supply Commission.

Following an account of the Irrigation experience in the State of Victoria, Mr. East refers to the attempt made in 1905 to set the various projects up on a self-liquidating basis. He reports that the Act then proposed that the revenues to repay the money borrowed by the Irrigation Districts, should be raised by an annual direct tax on the value of the land benefited, in proportion to its assessed valuation, with no tax on improvements. Unfortunately, he says, this policy was alleged to be "difficult to apply", and it never was actually put into operation, because a new law was enacted making the annual charges due from

the land holders on a quantitative basis of so much per acre foot of water used.

The Hon. George Swinburne, the Minister in charge of the 1905 Bill, stated on its second reading that the increase in land values would provide an adequate source of revenue to enable the Gouldburn-Loddon project to become self-supporting by 1917. Mr. East comments in his recent report, that "this result would have been achieved, for land values in these areas have been more than doubled and revenue would have increased proportionately. One of the advantages of Swinburne's system would have been its tendency to prevent excessive rises in land values, and would, therefore, have reduced speculation in the irrigable lands."

On the matter of high vs. low land values, Mr. East remarks:

"Contrary to the general belief, high land values for farming land are a very great handicap to the farming industry. So serious have been the effect of rising land values over many years that it is hardly an exaggeration to say that the farmer or grazier who has to purchase his land at the ruling market price * * * and has interest to meet on more than two-thirds of the purchase price can never make more than the barest living. There can be no stability in rural areas while farmers look for their profits from increased land values instead of from the products of the soil * * *"

Summing up his Report, Mr. East says:

"Land values are not wealth in the economic sense, although increases in land values may serve as an

indication that an undertaking is profitable to the community. The ownership of land consists of the legal right to receive a share of the wealth which can be produced by labour on that land, present and future, and land value is simply the capitalized value of that share. (After taxes.) The carrying out of public works such as roads, railways and water supply, makes possible increased production from the land, or more intensive use of the land, and, as practically the whole advantage goes to the land owner—as distinct from the worker engaged in production—this advantage is capitalized in increased land value."

"Report on Large Land Holdings in California."

Excerpt from the Second Annual Report by California Commission of Immigration & Housing.

"Few will take issue with the contention that California should comfortably support many, many times her present population. On the other hand it must be conceded that there have been times during the past few years when it seemed as if California was unable to support even her present limited population. That this paradoxical state of affairs does exist is in itself conclusive evidence of a weak spot in our social structure.

The explanation seems to rest in the facts that on the one hand growth of population depends upon easy access to the land; whereas, on the other hand, the prospective purchaser finds land either obtainable

only at excessive prices, or withheld altogether from the market by those who refuse to sell in the hope that the future will bring them a much higher price.

To this increased value, these latter contribute nothing but mere abstinence.

Land withheld from sale is practically non-existent; thus the vailable supply is limited, and consequently prices of the land offered for sale are artificially and unnaturally forced up.

Idle and unimproved lands seems to constitute one of the safest and most profitable investments, and, unfortunately for the unemployed, the investment in land does not need the assistance of labor or require the payment of wages, nor does it compel the owners of wealth to bid against each other for labor. Wealth may thus be invested and large gains realized from it by merely waiting, without its owners paying out one dollar in wages or contributing in the slightest degree to the success of any wealth-producing enterprise, while every improvement in the arts and sciences and in social relations, as well as increase in population, adds to its value.

By this means we foster unemployment, yet it is considered legitimate business to purchase land for the avowed purpose of preventing capital and labor from being employed upon it until enormous sums can be extracted for this privilege."

Due service and receipt of a copy of the within is hereby admitted

this.....day of March, 1944.

.....

Attorneys for Appellee.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1940

MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Martin Bekins, deceased; MILO W. BEKINS and REED J. BEKINS, as trustees, appointed by the will of Katherine Bekins, deceased; JAMES IRVINE, J. R. MASON, JAMES H. JORDAN, A. HEBER WINDER, as trustee of Eva A. Parrington Trust; C. A. Moss, and H. E. CURTIS, creditors of Lindsay-Strathmore Irrigation District,

Petitioners,

vs.

LINDSAY-STRATHMORE IRRIGATION DISTRICT, an insolvent taxing agency,

Respondent.

No. 696

JAMES H. JORDAN, J. R. MASON, L. F. ABADIE, GEORGE F. COVELL, and FIRST NATIONAL BANK OF TUSTIN (a corporation),

Petitioners,

vs.

PALO VERDE IRRIGATION DISTRICT, an irrigation district,

Respondent.

No. 698

PETITION FOR A REHEARING.

J. R. MASON,
1920 Lake Street, San Francisco, California,
In Propria Persona.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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Respondent.

} No. 698

PETITION FOR A REHEARING.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Comes now petitioner J. R. Mason, the owner of some bonds of respondents, appearing in propria persona and respectfully submits this, his petition for a rehearing in the above entitled causes.

Your petitioner is a layman, who subscribes to the quotation from "The Rights of Man", by Thomas Paine, as follows:

> "The end of all political associations is, the preservation of the rights of man, which rights are liberty, property, and security; that the nation is the source of all sovereignty derived from it: the right of property being secured and inviolable, no one ought to be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity."

POINT I.

Among the objections raised in the Courts below, the chief question presented is, in the opinion of this petitioner, as follows:

> "Where a State has created a Governmental **Single-Tax** 'Enclave', and empowered it to contract and exercise the power of direct taxation upon the value of land, without limitation as to rate, amount or time, to whatever extent may prove necessary to meet its contracts, can such power once given be withdrawn until the contract is satisfied, even when, as here, the State

> Supreme Court has decided that the power given Respondents and all their property constitute a 'Public Trust', owned by the State and immune from taxation, partition and execution?"

At the time this Honorable Court approved 11 U. S. C. A. 401-403 in *U. S. v. Bekins,* 304 U. S. 27, the California Courts had rendered a great many decisions, giving a wide variety of interpretations to the nature of irrigation districts, even going so far in one case as to hold them not to be political subdivisions. (*Wood v. Imperial I. D.,* 216 Cal. 748, 753.) The *Bekins* case, supra, was decided in April, 1938. On November 28, 1938, the California Supreme Court, with full knowledge of the extent of the Bekins ruling, decided four cases,* which reversed and clarified prior conflicting interpretations, and put respondents wholly outside the class eligible to come under 11 U. S. C. A. 401-403, if, under the separability clause in it, the contracts of any kind of state instrumentality are entitled to immunity.

**Provident Land Corp. v. Zumwalt*, 12 Cal. (2d) 365, 85 P. (2d) 116; *El Camino I. D. v. El Camino Land Co.*, 12 Cal. (2d) 378, 85 P. (2d) 123; *Clough v. Compton-Delevan I. D.*, 12 Cal. (2d) 385, 85 P. (2d) 126; *Moody v. Provident I. D.*, 12 Cal. (2d) 389, 85 P. (2d) 128; *Anderson-Cottonwood I. D. v. Klukkert*, 13 Cal. (2d) 191, 88 P. (2d) 685; *Glenn-Colusa I. D. v. Ohrt*, 31 Cal. App. (2d) 619, 88 P. (2d) 763; *Pac. Coast Jt. Stock Land Bank v. Roberts* (Dec. 1940), 1 Cal. Dec. 467. In *Bekins v. Heiken* (Dec. 7, 1940), 1 Cal. Dec. 258, the same court that issued *Clough v. Baber*, 38 Cal. App. (2d) 50, clarified that opinion, as follows:

> "The latest case applicable here is *Clough v. Baber* (supra). There an irrigation district was involved, and the district was admittedly insolvent. The rule is there laid down supported by a long line of well-recognized authorities that when the debtor is insolvent and there are not sufficient funds with which to pay all obligations in full, and the power to raise funds by taxation *or otherwise* has been exhausted, then equity may order the accessible money prorated among the holders of all valid claims. Such a situation, however, does not here exist. We have no showing of insolvency (and such a status cannot be assumed except upon clear proof), and the power to raise funds by taxation or otherwise has not been exhausted."

In addition to ruling on November 28, 1938, that the functions of California irrigation districts are "exclusively governmental", and their bonds payable from unlimited ad valorem taxes, it was held that

> "the district may freely transfer, lease or otherwise deal with the lands, in so far as its *power* is concerned, but the *lands* remain in trust, and the district exercises its powers, however broad, as a trustee * * * it necessarily follows that their proceeds, whether by sale or lease, are likewise subject to the trust. * * * The land is the ultimate and only source of payment of the bonds. It can never be permanently released from the obligation of the bonds until they are paid. * * * Any practice which removes the land from its position as ultimate security for the bonds, or which places its proceeds beyond the reach of the bondholders, destroys that plan and is contrary to the spirit of the act." (*Provident Land Corp. v. Zumwalt,* 85 P. (2d) 116.) (November 28, 1938.)

"It is clear that while it has been held in a number of cases, prior to the amendment of Sec. 52, supra, that a money judgment was proper to be entered against the district, and also necessary to prevent the bar of the statute after the lapse of four years, it is likewise clear that the entering of a money judgment against the district does not give to a bondholder any additional remedies in seeking to enforce the payment on matured bonds and coupons * * * The endorsement on the bonds and coupons by the treasurer of the district binds the district to pay that rate of interest whenever funds are available for such purpose. Thus the financial interests of the plaintiff are rendered exactly the same by the endorsement as it would

> be after obtaining a money judgment * * * That the annual assessments and the sale of lands upon which the assessments are not paid may never realize sufficient money to pay the indebtedness of the district is entirely beside the question. The property of the district, so far as it owns any property, constitutes a public trust and is held by the district for a public use, and, therefore is not subject to levy and sale upon execution by a creditor of the district." (Citations.)
>
> *Moody v. Prov. I. D.,* 85 P. (2d) 128. (November 28, 1938.)

These decisions of the highest state Court, were followed by still later decisions, holding that all property, including land acquired by the district for unpaid taxes, and crops received in lieu of cash rent, are completely tax exempt (*Anderson-Cottonwood I. D. v. Klukkert,* supra, and *Glenn-Colusa I. D. v. Ohrt,* supra), which appear to clearly bring respondents under the same rule as was decreed by this Honorable Court in *N. W. University v. Miller,* 99 U. S. 309, and would seem to make it certain that Congress in 11 U. S. C. A. 401-403, Sec. 83(i) did not intend nor attempt to include such instrumentalities of a state as respondents, nor their contracts.

In none of the hearings in re 11 U. S. C. A. 401-403, nor in the remarks prior to its passage in Congress was there a suggestion it could apply except to districts that are "mere agents of the landowners and not of the State in the exercise of their powers", and to bonds secured by special assessments, limited both as to time and to benefits received, such as Arkansas

drainage districts are held by their Courts to be. None of the hearings show testimony taken from an actual working farm owner, who ever asked for the amendment. But, Mr. C. H. Scott, President, National Drainage Association, testifying on March 17, 1937, before the House Committee on the Judiciary said that the Farm Credit Administration would not purchase mortgages on land in districts in financial difficulty, until bonds ahead of the mortgages were scaled down.

The same conflict of interest exists in every county and city with bonds out. Given the power to "compose" the tax-secured bonds of local governments, encouragement would be given to all mortgage holders, ground rent collectors and like situated groups to open a drive on Congress to amend the act again, permitting involuntary as well as voluntary petitions, and omitting any consent by any creditors. There are, in fact, already whisperings that this is to be sought, soon. Your petitioner regards as ominous, in view of the strong charges of usurpation of state rights made by 41 states in the *New River* case, decided December 16, 1940, that no state official has appeared to criticize or oppose the original Chapter IX or the present amended Chapter IX in any of the hearings, or the petitions filed by any local government. (Per contra, see brief for rehearing in No. 859, October term, 1935, filed by ten states. Dated September 23, 1936.) Knowing that Congress is, in effect without power to levy direct taxes (*Pollock v. Farmers L. & T. Co.*, 157 U. S. 429) the total absence of objection from state

officials to letting Congress have the power to regulate the state's contract to collect direct taxes, is clear proof that powerful groups are sympathetic to any move to regulate this power of the state.

When Congress authorized the R. F. C. to refinance respondents, it recognized that some persons would desire to hold their bonds to maturity or until paid. The fact that Congress provided that a loan could be made to any district, when owners holding a mere majority had consented to accept the price offered, makes it clear that the subsequent efforts in both the federal and state Courts have not been necessary. If any private interests had employed similar coercive schemes to compel a local government to honor none of its bonds, except those held by the group, until they had acquired all the bonds, at their price, how would that be any different from the instant case? In the case of Oakdale Irrigation District, the R. F. C. allowed over a million dollars of 5% bonds (now quoted at 113 bid) to remain out, after "co-operating" with the same district in "refinancing" most of that district's bonds at 50 cents, flat, even including 6% bonds. The prices being demanded for land in that district from homeseekers today are so high that few can afford to buy. Thus, no "scale down" of such bonds serve to benefit any homeseeker, but only to take property rights from the investors in public bonds to enrich mortgage and land holders. Neither can such "refinancing" benefit any tenant or "share cropper". It will enable a working farm owner to have more money to pay a mortgage, but is that not

equally true in every community with bonds out? Your petitioner is deeply sympathetic with the plight of overmortgaged citizens in both country and city, and has long believed that there must be a drastic write down in such mortgages. But, he also believes that no group of citizens should be allowed to succeed in forcing down the mandatory tax rate, whether directly or indirectly as is being sought here, when the rule of law is the opposite, when any one citizen seeks debt relief. Section 64(a) General Bankruptcy Act.

In brief, if groups can achieve such private enrichment, it would be no more "revolutionary" to amend the other sections of the act to permit any citizen unable to meet his debts, to pay private creditors, *before* taxes.

An argument to the effect that because other citizens have chosen to surrender rights guaranteed them under our Declaration of Independence and Bill of Rights, and taken whatever was offered proves the "fairness" of any repudiation of a contract, and makes it unjust for Petitioner to seek to protect not alone his rights, but those of the sharecroppers, tenants and even the citizens still less fortunate, who also have rights, is no more valid than to argue that because a majority had consented to surrender any other rights, guaranteed under our Constitution, your Petitioner should be compelled to do likewise.

The Court may take judicial notice that in no instance has any Court below in California so much as questioned the figure, set by the R. F. C., or suggested it be changed up or down, by a fraction of one cent.

It is as impossible for any creditor to prove the ability of respondents to pay, as it would be to prove the ability or inability of any county or city to pay its debts. If there is any "measuring rod", your petitioner has never heard of it being even discussed in any proceedings under Chapter IX.

That the levy and collection of such taxes by the states was understood to be "independent and uncontrollable" in the "most absolute and unqualified sense", is stated by Hamilton in Federalist Essay No. XXXII. Also see Nos. XXXI, XLIV/XLVI. Thus, by denying this petition, will not the way be opened for Congress to pass even such an act as was passed in England by Parliament in 1660 (12 Charles II., c. 23) and which exempted landed property from the dues previously payable to the state, and shifted the costs of government over to the rent racked tenants of the feudal lords in both city and country? The events, both abroad and at home, during recent years involving "usurpation" of one kind or another, seem to make it imperative, as perhaps never before that the precise line of partition between the power of the general and state governments to levy direct taxes be either re-affirmed as in *Ashton v. Cameron County W. I. D.*, 298 U. S. 513, or more clearly marked than it is in the *U. S. v. Bekins* case, supra.

The "Royal Commission of Dominion-Provincial Relations", reported its findings to the Canadian Government in 1940, in three large volumes. Although recognizing the serious plight of municipalities in Canada, it is nowhere even suggested that any juris-

diction can be vested in the Dominion, but declares that exclusive power resides in the Provinces.

That tax defaulted real estate, and neglect, failure and refusal by most, if not all the states to deal effectively with it, constitutes a problem that can not longer be safely blinked at, is proven in reports of planning and tax commissions in many states. An example is the 400 page 1939 report by the Illinois Tax Commission, which shows that such delinquencies in Illinois and adjoining states are very large, and as one witness said (p. 197) "tax delinquency in Cook County is its Number One Problem".

Your petitioner is not certain whether the **Single-Tax** nature of the amendment to Section 35 of the act under which the bonds of respondent Lindsay-Strathmore District were issued (Stats. 1909, p. 461) has been clearly understood by this Court. Under this amendment, the revenues necessary for the district to levy for expenses are derived from taxes, on the *value* of the land only. Such taxes or assessments are not levied according or limited to benefits. (*Judith Basin I. D. v. Malott,* 73 F. (2d) 142.) If not paid within 3 years, title to the land passes to the district "free of all encumbrances". (Sec. 48.) The district has also full power to rent land. (Sec. 47.) That such a state "Enclave" is not contrary to the letter or spirit of our form of government is discussed in *Fairhope Single Tax Colony v. Melville,* 69 So. 466; (*Henry*) *George v. Braddock,* 18 A. 881; *State v. Amana Soc.,* 109 N. W. 894. These cases were long and bitterly contested.

All economists now agree with the conclusion in the unanimous decision by this Court in the *Pollock* cases, supra, that a landlord can not shift a tax on ground rent to a tenant or anybody else. They further agree that such a tax can in no way add to costs of production, nor cause inflation, nor lessen the buying power of non-land owning consumers. But such taxes do force those holding land for speculation to improve or sell it to some one that can and will.* There is no obligation for any man to hold title to land he thinks too heavily taxed, nor can a district get more than the rental value for its land.

> "A landlord is entitled to insist that his lease be either rejected or fully assumed, under the plan."
>
> *Monk Realty Co. v. Wise Shoe Stores,* 111 F. (2d) 287, 290 (1940).

The Oakdale Board of Trade said five years after this amendment:

> "The Single Tax has made a great difference for the betterment of the Oakdale Irrigation District. * * * Many say they can now afford to borrow money and make improvements which they could not do under the old system. We invite farmers to come and settle among us. Their in-

*"A tax on rent falls wholly on the landlord (and mortgage holder). There are no means by which he can shift the burden upon anyone else." "Principles of Political Economy," by John Stuart Mill.
See also "Wealth of Nations" by Adam Smith, Book V, Ch. 2, part 2, art. 7; "Social Statics", by Herbert Spencer (1851 Ed.), Chap. IX, "The right to the use of the Earth"; "Elements of Social Science", by Patrick Edward Dove (1854), Part II; "Principles of Economics", Taussig, 3rd Revised Edition, page 540; "Progress and Poverty", by Henry George, Book VII, Chap. 2, pars. 1-5, and Book IV, Chap. 2, par. 10 et seq.; "Condition of Labor", by Henry George, Sec. 1, first footnote.

dustry will not be taxed. Our Single Tax system encourages industry. We make the man who keeps his land idle pay the same tax as the man who improves. Those who build up our community and create its wealth will not be penalized."

In addition to the attack against this act in *Fallbrook Irr. Dist. v. Bradley,* 164 U. S. 112 (1895), when Attorney Maxwell warned this Court,

"It is communism and confiscation under guise of law"

there were almost unceasing attacks brought, especially after Stats. 1909, p. 461. But this amendment was upheld in *Mordecai v. Supervisors,* 183 Cal. 434.

In 1919 the act was further amended to permit the districts to generate and distribute electric energy, and to issue revenue bonds. (Stats. 1919, p. 778.) In 1932 the Irrigation Districts Assn. of California warned through its secretary Mr. Walter D. Wagner that the same utility interests which opposed the Boulder Dam and All-American Canal,

"are now attempting to throw the (Imperial) District into default; they are handicapping the Board of Directors in every way possible, and are apparently influencing the banks to indirectly and perhaps inadvertently aid them in their nefarious scheme. They are willing to wreck everything and everybody in order to prevent that electric power (on All-American Canal) being generated by the District. * * * The attempt of these interests to wreck the district and the 62,000 people in it, is dastardly * * *." (Fresno Bee, May 12, 1932.)

This power question was decided in *Nev.-Cal. Elec. Co. v. Imperial I. D.,* 85 F. (2d) 886. Hearing denied by this Court.

The Christian Science Monitor, June 14, 1934, page 1, in a special wireless from Madrid, tells about the struggle by Catalonia, Spain, to get a law similar to the law creating respondents. It tells that Spain's highest Court at Madrid had the week before declared unconstitutional such a law enacted by Catalonia, and that the state had then enacted another one, which is "not favored by the central government because it splits Catalonia into small farms, advantageous to small holders". This incident, it is claimed, was the main spark which started the civil war in Spain.

The Hearings (4 volumes) of the House Interstate Migration Committee, printed pursuant to H. Res. 63 and 491, and such books as "Factories in the Fields", and "Grapes of Wrath", disclose a concentration of land holdings which the constitution of Cal. Art. XVII, Sec. 2 (1879), (the same year "Progress & Poverty" appeared), so clearly denounced as being "against the public interest".

Abraham Lincoln, in a letter to his law partner Gridley said:

"The land, the earth that God gave to man for his home, his sustenance and support, should never be in the possession of any man, corporation, society, or unfriendly government, any more than the air or water, if as much. An individual company or enterprise requiring land should hold no more in their own right than is needed for their home and sustenance, and never more than they have in

actual use in the prudent management of their legitimate business, and this much should not be permitted when it creates an exclusive monopoly. All that is not so used should be held for the free use of every family to make homesteads, and to hold them so long as they are so occupied. A reform like this will be worked out some time in the future. The idle talk of foolish men * * * will find its way against it, with whatever force it may possess, and as strongly promoted and carried on as it can be by land monopolists, grasping landlords, and the titled and untitled senseless enemies of mankind everywhere."

("Abraham Lincoln, The men of his time", Robt. H. Browne, Vol. II, p. 89.)

Lord Thos. B. Macauley in his famous letter of May 23, 1857 said:

"I have long been convinced that institutions purely democratic must sooner or later, destroy liberty, or civilization, or both * * * You may think your country enjoys an exemption from these evils. I will frankly own to you that I am of a different opinion. Your fate, I believe to be certain, though it is deferred by a physical cause. As long as you have a boundless extent of fertile and unoccupied lands, your laboring population will be far more at ease than the laboring population of the Old World * * * But the time will come when New England will be as thickly populated as Old England. Wages will be low; and will fluctuate as much with you as with us * * * Then your institutions will be fairly brought to the test * * * As I said before when a society has entered on this downward progress, either civilization or liberty must perish. Either some

Caesar or Napoleon will seize the reins of government with a strong hand or your republic will be as fearfully plundered and laid waste by the barbarians in the 20th century as the Roman Empire was in the fifth—with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without and that your Huns and Vandals will have been engendered within your own country, by your own institutions."

(Littels Living Age, May 19, 1860.)

"While the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation." Chief Justice Taney in *Charles River Bridge v. Warren Bridge,* 11 Pet. 419.

"Here (Sicily), in the end, Rome laid her mortmain upon Greek Phoenician, and Sikelot alike, turning the island into a granary and reducing its inhabitants to serfdom."

(Italy and Greece by J. A. Symonds, page 143.)

"Men, too often in their revenge set the example of doing away with those general laws to which all alike can look for salvation in adversity." *Thucydides,* 426 B. C.

POINT II.

While petitioner has devoted himself mainly to the basic constitutional question because of the fundamental importance thereof, petitioner submits that the point he is about to present is a most important point of law involved in this case.

On the question of whether the R. F. C. is a creditor "affected" by the plan, your petitioner again urges that the Court below erred in holding that it is.

In support of this view he submits the able opinion of the learned trial judge in the recent case of *Texas Agricultural Assn. v. Hidalgo County W. C. & I. District,* 36 F. Supp. 314 (decided on rehearing Feb. 10, 1941):

> "While under the statute the R. F. C. has the right to be considered as a creditor, for the whole amount *for voting purposes* (citations), yet a construction of the contract with R. F. C. as a whole clearly shows that the District's indebtedness is not the amount of the original, old securities, but only in the amount of the disbursements actually made by R. F. C. under its loan."

Unless the contract between R. F. C. and respondents differs essentially from that with this Texas district, which your petitioner believes it does not, this very important point which was so carefully studied in *American United Mutual Life v. Avon Park,* No. 31, October Term, 1940 (decided Jan. 1941), should be thoroughly investigated by this Honorable Court, because it has never before been squarely and clearly discussed in any of the other opinions, in the Courts below, so far as your petitioner is aware.

That there is uncertainty in the Courts below, and a serious necessity that the question presented be resolved by this Court is evidenced by the conflicting judgments in *Central R.R. of N. J. v. Martin,* 115 F. (2d) 968 and *Arkansas Corp. v. Thompson,* 116 F. (2d) 179; *In re Mission School District,* 35 F. Supp. 37 and 116 F. (2d) 175.

Because the Court in *U. S. v. Bekins,* supra, did not explicitly overrule or reverse the *Ashton* case, supra, a rehearing and opinion that would resolve the existing confusion, would save much uncertainty, and time of the Courts below, which conflict now threatens utter chaos in many local governments, and increasing demands for undemocratic legislation.

The nation-wide importance of the issue, is one of the reasons why your petitioner submits this urgent plea for a review, and that writs of certiorari may issue out of and under the seal of this Honorable Court, as prayed for in the petitions for writs of certiorari herein.

Dated, San Francisco, California,
March 7, 1941.

Respectfully submitted,
J. R. MASON,
In Propria Persona.

CERTIFICATE OF PETITIONER.

I hereby declare that the foregoing petition for a rehearing is submitted in good faith and is not interposed for delay.

Dated, San Francisco, California,
March 7, 1941.

J. R. MASON,
In Propria Persona.

Due service and receipt of a copy of the within is hereby admitted

this.....*day of March, 1941.*

.....

Counsel for Petitioners.

.....

.....

.....

Counsel for Respondent
In Case No. 696.

.....

Counsel for Petitioners.

.....

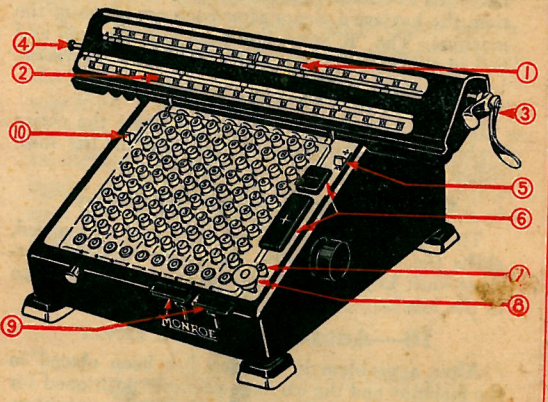
Counsel for Respondent
In Case No. 698.

How to Operate

MONROE

HIGH SPEED ADDING-CALCULATOR

Model MA-5



1—Upper Dials

In the Series 3 Monroe there are two sets of upper dials; the right-hand set has black figures only and the left-hand set black and red figures. The right upper dials register multipliers and serve as an item counter in addition. The left upper dials register multipliers in black figures and quotients in red figures.

2—Lower Dials

The lower dials show the result in addition and multiplication, the remainder in subtraction, and the dividend in division.

3—Dials Pinch Clearance

The top clear lever, when depressed, clears the upper dials. The bottom clear lever, when raised, clears the lower dials. Pinching the two clear levers together clears both upper and lower dials simultaneously.

4—Upper Dials Control Knob

Both sets of upper dials clear simultaneously unless this knob is pulled out (to the left), in which case the left upper dials only clear and the right upper dials accumulate all amounts registered in those dials.

5—Upper Dials Reversing Lever

When this lever is pushed forward into the ÷ position, the direction of rotation of the upper dials is reversed. It is used only in more involved calculations and for ordinary work should be kept in the down, or x, position.

6—Plus and Minus Bars

The plus bar is used for the forward operation of the machine, as in addition and multiplication.

The minus bar is used for the reverse operation of the machine, as in subtraction and division.

7—Repeat Key

When the "R"epeat key is depressed and locked into position, the figures set on the keyboard remain locked until cleared by the operator. By pressing lightly towards the operator the "R"epeat key is unlocked and released; when it is in the raised position, the keyboard clears after each operation of the machine. The "R"epeat key must be depressed and locked when performing multiplication and division.

8—Clear Key

Depressing the master clear key clears the entire keyboard and depresses all zero keys in the individual columns.

9—Electric Carriage Shift Keys

The right-hand carriage shift key, when depressed, shifts the carriage to the right. The left-hand carriage shift key, when depressed, shifts the carriage to the left.

10—Automatic Divide Lever

After a problem in division has been placed in the machine and the carriage properly positioned for division, this lever is pushed into the upper position. The division is then carried out automatically.

To Clear the Monroe

Keyboard —Depress the clear key
Upper Dials—Depress the top clear lever
Lower Dials—Raise the bottom clear lever
Both Dials —Pinch the two clear levers together

Addition and Subtraction

"Locked-Figure" Method. Depress the repeat key.

Addition

Keyboard—Set	35.54	and depress plus bar
Keyboard—Set	84.31	and depress plus bar
Lower Dials	119.85	Total

Subtraction

Lower Dials	119.85	
Keyboard—Set	41.25	and depress minus bar
Lower Dials	78.60	Remainder

To change the last number added: Since the amount to be changed is still on the keyboard, depress the minus bar, thus subtracting it from the total; then set the number to be added on the keyboard and depress the plus bar.

When interrupted, the last number added remains on the keyboard showing the operator where to begin upon resuming work.

Ciphers—Depress clear key or the zero clear key in column where cipher is desired.

Multiplication

789 × 234 = 184626

Set 789 on the keyboard. Hold the plus bar down until the machine makes four revolutions and a 4 appears in the right upper dials. By means of the right-hand carriage shift key, move the carriage one column to the right and hold the plus bar down until a 3 appears at the left of the 4 in the upper dials. Again shift the carriage and hold the plus bar down until a 2 appears in the upper dials at the left of the 3. The machine reads:

Upper Dials	234	Multiplier
Keyboard	789	Multiplicand
Lower Dials	184626	Result

A series of multiplications with a constant factor may be performed by leaving the constant number set on the keyboard and changing the numbers in the upper dials from one amount to another by means of the plus or minus bar as the case requires.

Keyboard		*Upper Dials*		*Lower Dials*
789	×	234	=	184626
789	×	432	=	340848
789	×	256	=	201984

Division

3146 ÷ 22 = 143

Set the dividend, 3146, on the keyboard and with a single depression of the plus bar register it in the lower dials. Clear the upper dials and keyboard. Set the divisor, 22, on the keyboard and shift the carriage until the left-hand digit of the dividend in the lower dials is directly in line with the left-hand digit of the divisor on the keyboard, thus—

3146
22

~~Push the divide lever forward into the ÷ position.~~ The Monroe performs the division automatically and the quotient, 143, appears in red figures ~~in the left-hand upper dials. Disregard figures~~ in right-hand upper dials.

Accurate Decimal Points

The Monroe Rule

The number of decimal places in the lower dials is always the sum of the decimal places in the upper dials and the decimal places on the keyboard. The Monroe Rule may be expressed as this formula:

Upper Dials + Keyboard = Lower Dials

The decimal markers in the dials and on the keyboard are fixed according to the largest number of decimal places in the factors of the work in hand. Whole numbers are put in the machine to the left of the markers and decimals to the right of the markers. When this is done, answers appear CORRECTLY POINTED OFF.

For the following work, set decimal markers: 3 places in upper dials, 3 on the keyboard, and 6 in the lower dials.

53⅞	yds.	@	32½¢	yd.	= $ 17.51
4355	lbs.	@	3.35	C	= 145.89
65365	ft.	@	43.45	M	= 2840.11

Keyboard		*Upper Dials*		*Lower Dials*
53.875	×	.325	=	17.509375
43.550	×	3.350	=	145.892500
65.365	×	43.450	=	2840.109250

Division Involving Decimals

804.096 ÷ 25.67 = 31.3243

The number of decimal places required in the answer, plus one place, is the number of decimal places to be set in the upper dials. Note the number of decimal places in the dividend and the divisor, the greater number being the number of places to be pointed off on the keyboard. Add the number of decimal places in the upper dials to those on the keyboard to determine the number of decimal places to be set in the lower dials. In this example decimal markers are set: (3 + 1) 4 in the upper dials, 3 on the keyboard, and 7 in the lower dials.

Set the dividend on the keyboard correctly around the decimal point, and with one depression of the plus bar register it in the lower dials so that it is correctly pointed off there. Depress the master clear key and depress the minus bar which clears the 1 from the upper dials. Set the divisor on the key-

board correctly around the decimal point. By means of the right-hand carriage shift key, move the carriage so that the left-hand digit of the dividend in the lower dials is directly over the left-hand digit of the divisor on the keyboard and push the divide lever forward into the ÷ position. The machine divides automatically and the quotient, 31.3243, shows in red figures in the left upper dials CORRECTLY POINTED OFF.

If it is desired to stop the division operation at any particular point, simply restore the divide lever to its normal position. The machine will complete the division in that column and automatically stop. Should it be desired to carry out the answer further, again push the divide lever into the ÷ position and the machine will proceed with the division.

Checking An Invoice

By Accumulation

29 articles	@ $ .49	ea. =	$14.21
13 articles	@ 2.25	ea. =	29.25
5 articles	@ 1.89	ea. =	9.45
Totals 47 articles			$52.91 cost

Pull out upper dials control knob to the left. Set price figure on the keyboard and multiply by number of articles. After each multiplication clear left upper dials and keyboard only, permitting accumulation of the number of articles in the right upper dials and of the cost in the lower dials. (Use left upper dials to register the articles of each individual extension.)

At the completion of the last multiplication, the total number of articles shows in the right upper dials and the total cost in the lower dials.

Percentages of Increase or Decrease

Dept.	*This Year*	*Last Year*	
A	$9581	$7239	32.35%
B	8501	10476	18.85%
C	11276	9593	17.54%
D	8943	9846	9.17%

In each case set this year's figure on the keyboard and register it in the lower dials. Do NOT clear the 1 in the upper dials. Divide directly by last year's figure.

At the completion of each division the Monroe shows automatically whether the percentage is an increase or a decrease. If an increase it appears entirely in red figures in the left upper dials; if a decrease it shows in the right upper dials in black figures with no 9's to the left of the decimal point.

Important

Keep hands off the machine while it is in action. All Monroe models are equipped with all necessary safeguards against misoperation. Like any power-driven mechanism, however, care should be taken to guard against misuse.

When the MA-5 Monroe is in operation the operator should be careful NOT to attempt:

- To clear either dials or keyboard
- To depress either plus or minus bar when machine is dividing automatically
- To touch or push the shift rod at the left front of the machine
- To move the upper dials reversing lever
- To depress the electric carriage shift keys when machine is dividing automatically

If the automatic divide lever is moved into the dividing position and no keys are depressed on the keyboard, or if the division problem is started with the carriage set too far to the left, the machine will run continuously. To stop the machine, restore divide lever to normal position and depress the plus bar.

Figure Service and Personal Instruction

The Monroe is capable of handling all kinds of figure work. Our representatives are qualified to suggest the most efficient Monroe methods of handling your own work and will give personal instruction in the operation of the machine. This is part of the Monroe service which is offered without charge to our users, so they may get the most out of the Monroe machine.

Monroe Calculating Machine Company, Inc.
General Offices and Plant
ORANGE, NEW JERSEY, U. S. A.

Form 773-S

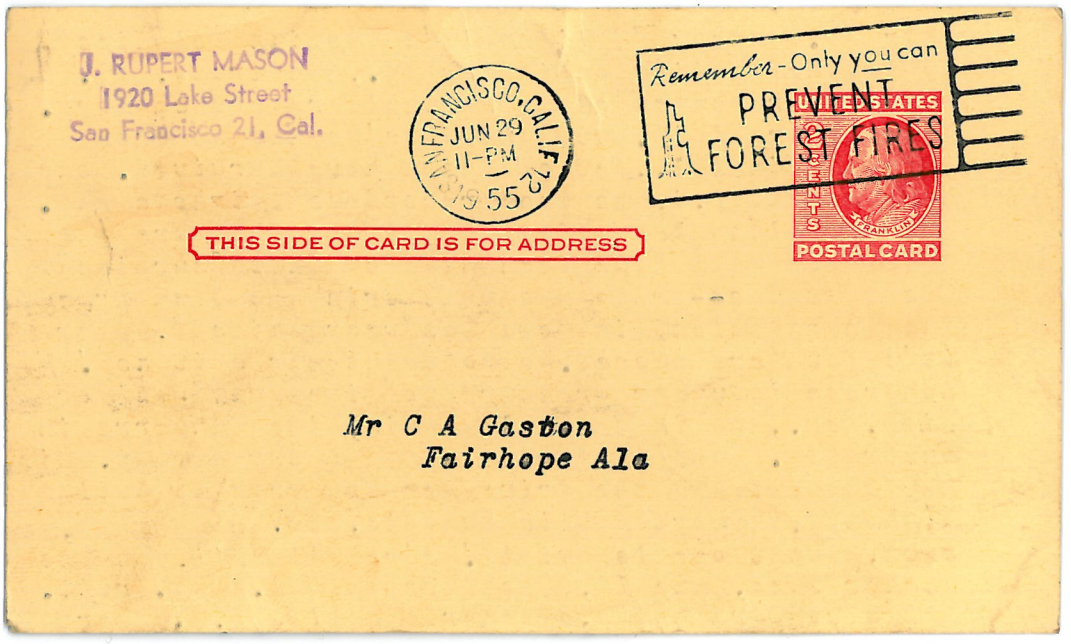
Printed in U. S. A.


U.S. POSTAGE
4¢
AIR MAIL
AIR MAIL-POSTAL CARD
SAN FRANCISCO, CALIF.
JE 16 9 PM
1955
Mr C A Gaston
Fairhope Ala

Dear Mr.Gaston: Thanx for June 7 Courier with review by
Paul.Good job. Sorry the Alyeas thought it necessaryto
pin the label"experiment"quite so often on FairhopeSTC.
The USConstitution could also be called an "experiment"
Any instrumentality that began with nothing but land
that nobody wanted,and made it possible for families to
live on that land,without paying as much as they have
to pay elsewhere,and has afforded money saving opport-
unities,relatively immune from booms&busts for 60years
is less an"experiment",than is living in most cities.
On pp.296,300 why is landvalue taxation labelled as
"discriminatory".It is "Equal Justice Under Law",and if
not,what tax system could be? What belongs to Caesar?
Is the USConst meant to equally protect tax payers with
no land? I so read the 1st 10,13&14 Amdnents.Fairhope
is to Ala what little Denmark is to Europe.You have a
60 year record that can be pointed to, proudly. But
special privilege never stops trying,so be vigilant!
Sorry you unable come Phil.July 4. Kindest,J.R.Mason.


SAN FRANCISCO, CAL.
JUL 7
5 30PM
1955
UNITED STATES
2 CENTS
FRANKLIN
POSTAL CARD
THIS SIDE OF CARD IS FOR ADDRESS
Mr C A Gaston
Fairhope Ala

Dear Mr.Gaston: Delited learn UnivNC Press may publ
"StoryOfFhpe".It publd"HG CitizenOfTheWorld"you know.
Plse be sure let me know if & when the book is publd.
Seems to me,your idea expressed in AnnualReport very
sound. Instead of taking in more land,use any surplus
income in ways that make Colony more attractive for
residents. Pick the most useful&beautiful trees,etc.
FrankLoydWright,Taliesen,SpringGreen,Wis.,Architect
has often spoken in support of S-T.Invite him visit
Fairhope,whenever nearby.He does much pro-bono-publico
& the homes&bldgs he designs are world renowned.
Adelaide(Austr)is circled by a lovely park. Making a
community more beautiful & distinctive never fails to
ATTRACT people,and increase competition for sites.
Possibly a statue of HG would get popular support?
In Cleveland is big statue(bronze)of TomLJohnson,with
the book(P&P by HG)in his hands.In center of city.
Kindest to Paul & his"family".Thanx for everything.
You've more friends,than you may suspect! J.R.Mason.


J. RUPERT MASON
1920 Lake Street
San Francisco 21, Cal.
SAN FRANCISCO, CALIF.
JUN 29
11-PM
55
Remember - Only you can
PREVENT
FOREST FIRES
UNITED STATES
2 CENTS
FRANKLIN
POSTAL CARD
THIS SIDE OF CARD IS FOR ADDRESS
Mr C A Gaston
Fairhope Ala

Dear Mr. Gaston: "California's Utopian Colonies" by RVHine (HuntingtonLibrary Pp., SanMarino, Cal. $4) has been recommended, as valuable reference work. I've not read it. But I know we've had numerous "Utopias" in Cal., few of which have survived. None have a better, if as good record as Fairhope STC. Has more land been added to STC or what are the main uses that have been made of that "surplus"? Has a statue-or monument honoring HG been urged? The Amana Colony in Iowa was "reorganized", after it's founders passed. No monument marks it now! Congress is under pressure to "give away" Boulder City, Nev., now in federal domain, like Canberra in Australia. LandHOLDING is FEDERAL tax exempt. This may suggest WHY the drive for Congress to build highways, support public schools, etc. CONSUMERS, as such, havent one "lobbyist"! We're all sail, and no anchor"? See, June 14, CSMonitor on Cal. by H. Trott. Let's compare notes, oftener? As always, J. Rupert M.

Mr C A Gaston
Fairhope Ala

Dear Mr. Gaston: Was delited see 4 Fairhope views in Aug"ScenicSouth"pub by StandardOilKy StarksBdg Louisville. Suggest you invite Readers Digest send an expert to study colony without"booms & busts". They recently sent man to study IrrigDists in Calif which tax LVs and exempt impts. Brazil's newCapital City"Brasilia" is being set up like Canberra Austr. Jamaica is going all out for LVT & to exempt bldgs. Reports from Denmark,NZ & Austr most encouraging. HOUSE&HOME(9 RockefellerCenter NY a HenryLuce Pub) favors LVT in June issue,especially pp 130 and 207. Ever see ChristianScienceMonitor? Invite them send reporter to look over Fairhope. Let me know anytime you think I might help,in any way. Did you ever hear if the Fairhope book by Alyeas sold many copies? Don't you think Land & Liberty a great magazine?

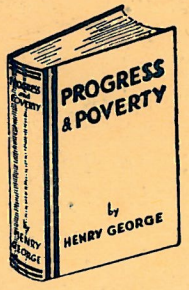
Cordially and sincerely,

J. RUPERT MASON
1920 Lake Street
San Francisco 21, Calif.

UN-TAX WAGES
and Earned Incomes.

Tax Un-Earned Wealth
To Support Government
Read how to protect
your earned income.
All libraries, or
book sellers. Many
Editions, $1.00 up.

READ



SAN FRANCISCO, CALIF.
APR 26
9-1PM
1956

THIS SIDE OF CARD IS FOR ADDRESS

Mr C A Gaston.
Fairhope Ala

Dear Mr. Gaston: Apr 26 56

What abt the book on Fairhope STC. Is it out, yet? Are you reading articles in C S Monitor by H. Trott? Mar. 13, 19, Apr. 3, 17 are recent "samples" worth noting. Four of his CSM articles have been put in CongRecord. They are "sparking" deep interest in many nations. Many are coming to Phil for July Fourth to help ring LibertyBell in the city where it and HG were born. Plse make every effort to help us ring that bell, in person, if possible. We'll never do it younger!

Clancy (HGSSS NY) has charge of the Phil meeting. Possibly Paul (&Mrs) can also come, They are invited!

LondonTIMES (Mar. 30) gives 3 pages to its review of Barker's book "HG" (OxfUnPress). 3pp is very unusual!

The IDEAS of HG have been in "moth balls", too long. Will be grateful for occasional Courier cuttings, and "leads". Marx has had spotlight. Let's turn it on HG. Fairhope, may yet be a shining star for all in dark. Thanx for protecting it. Do come to Phil. Ever. JRM.

No. 10,670

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

J. R. MASON,
Appellant,

vs.

BANTA CARBONA IRRIGATION DISTRICT,
Appellee.

APPELLANT'S CLOSING BRIEF.

J. R. MASON,
1920 Lake Street, San Francisco,
Appellant in Propria Persona.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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No. 10,670

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APPELLANT'S CLOSING BRIEF.

OPENING STATEMENT.

With regard to brief for appellee, the bottom question here, i.e., the authority of Congress to regulate the borrowing power of a sovereign State, under the Bankruptcy Clause, is not discussed.

Appellant has, at no time since the *Bekins* case (304 U. S. 27) questioned the constitutionality of 11 U. S. C. A. 401-404.

Neither is there any question about the constitutionality of the Federal Income Tax Law.

But, notwithstanding the broad language of the 16th Amendment, there are certain incomes which are still immune from the tax clause.

Bryant v. Comm., 111 F. (2d) 9;

Shamberg v. Commissioner, No. 107,713, decided by the Tax Court of the U. S. January 28, 1944;
Hale v. Iowa State Board, 302 U. S. 95, 107;
Helvering v. Gerhardt, 304 U. S. 405, 417.

Appellant respectfully submits that the constitutional principle of federal power, under the tax clause is firmly decided by *Pollock v. Farmers L. & T. Co.,* 158 U. S. 601, at page 630 (1895):

> "We have unanimously held in this case that so far as this law operates on the receipts from municipal bonds, it can not be sustained, because it is a tax on the power of the states, and on their instrumentalities to borrow money and consequently repugnant to the Constitution."

In the *Wilcutts v. Bunn,* 282 U. S. 216, case Chief Justice Hughes writing the unanimous opinion said after adoption of the 16th Amendment, at page 226:

> "These obligations constitute the contract made by the State, or by its political agency pursuant to its authority, and a tax upon the amounts payable by the terms of the contract has therefore been regarded as bearing directly upon the exercise of the borrowing power of the Government."

In the *Faitoute v. Asbury Park,* 316 U. S. 502, case, referring to the jurisdiction granted by 11 U. S. C. A. 401-404, the Court said:

> "The bankruptcy power is exercised * * * only in a case where the action * * * is authorized by state law. * * * *It would offend the most settled habits of relationship between the states and the nation to imply such a retroactive nullification of state authority over its subordinate organs of government."* (Italics supplied.)

Interest from the bonds owned by appellant is held to be federal income tax exempt by the Attorney General of the United States in *72 Op. A. G. 38 (1937).*

It can not be disputed that the powers delegated by the State to appellee include the authority to borrow money and to issue contractual obligations for its repayment. If the State had not authorized this borrowing, appellee would have been powerless to borrow. It was State action that made the borrowing possible, prescribed the powers and trust duties to collect taxes, and as much of the rental value of all the land within the district for as long as might be necessary to fulfill contracts, and established State ownership of all district revenues, property and any ultimate surplus. Had the State not borrowed through appellee, it could have issued its own bonds for the same governmental purpose.

The equal necessity for the States to have and preserve a power to borrow money "independent and uncontrollable * * * in the most absolute and unqualified sense" (The Federalist, XXXII) has been steadfastly defended throughout the history of the Republic. The Supreme Court in *Farmers Bank v. Minnesota,* 232 U. S. 516 (1914), quoted with approval the following extract from the opinion of Chief Justice Marshall in *McCulloch v. Maryland:*

> "The American people have conferred the power of borrowing money on their government, and by

making that government supreme, have shielded its action, in the exercise of this power, from the action of local governments. The grant of the power is incompatible with a restraining or controlling power, and the declaration of supremacy is a declaration that no such restraining or controlling power shall be exercised * * * By like reasoning it has come to be recognized that bonds issued by the States are not taxable by the Federal Government * * *''

Income may be derived from wages, interest or rent (as defined in Bouvier's Law Dictionary). Plenary power to tax both wages and interest was granted to Congress by Section 8 of Article I of the Constitution, but in the case of a tax on the rent value of land, the grant was conditioned by the requirement that such taxes must be apportioned among the several States.

Notwithstanding the flat contention of appellee, on page 5,

> ''All of the issues properly before this Court in this appeal have repeatedly been decided adversely to appellant by this Court in its aforesaid decisions which are now settled law.''

it is respectfully submitted that no decision by the Supreme Court of the United States is cited which directly or even by implication repudiates the following rule laid down in *Ashton v. Cameron County,* 298 U. S. 513:

> ''The power 'to establish * * * uniform laws on the subject of bankruptcies,' *can have no higher rank or importance* in our scheme of government than the power 'to lay and collect taxes'. Both

> are granted by the same section of the Constitution, and we find no reason for saying that one is impliedly limited by the necessity of preserving independence of the States, while the other is not.'' (Italics supplied.)

ARGUMENT.

FIRST PROPOSITION.

No more complete misapprehension of appellant's contention can be conceived than the dictum in appellee's brief that ''the holders of bonds of a district have the right to enforce their demands *solely* by an annual assessment on the lands in the district''. A full six months after the *Bekins* case (304 U. S. 27), and with full knowledge of the above language quoted by appellee, the Supreme Court of California overruled its earlier *Mulcahy v. Baldwin* (1932), 216 Cal. 517, decision, after exhaustive briefing and oral arguments, including petition for a rehearing, and decided in *Provident L. C. v. Zumwalt,* 12 Cal. (2d) 365, that in any district where the power to tax may have become ''useless'':

> ''The lands (acquired by the district for unpaid taxes) remain in trust, and the district exercises its powers, however broad, as a trustee. Once it is made clear that the lands are held in trust, it necessarily follows that their proceeds, whether by *sale or lease, are likewise subject to the trust.*'' (Italics supplied.)

The quoted sentence from *Clough v. Compton Delecan I. D.,* 12 Cal. (2d) 385, is wholly irrelevant to the

question involved under this proposition. Appellant has never said that his bonds create a "lien on the district's lands or resulting trust for his *sole* benefit".

In this *Clough* case, supra, the California Supreme Court said:

> "The property is by this language impressed with the public use, and *the trust is for all* the purposes of the act." (Italics supplied.)

Among these trust purposes, after operation and maintenance costs, is the fulfillment of contractual obligations.

Provident L. C. v. Zumwalt, supra.

In *Moody v. Provident I. D.,* 12 Cal. (2d) 389, the Court decided on the same day:

> "That the annual assessments and the sale of land (by the district) may *never* realize sufficient money to pay the indebtedness of the district, *is entirely beside the point.*"

Here the Court further held that Sections 29 and 52 of the statute creating appellee are

> "equivalent to a trust deed *by the State setting apart property out of which the money due was to be paid* * * *" (Italics supplied.)

These cases conclusively establish the vested property rights of appellant, as a *cestui que trust,* and his beneficial interest in and to the revenues of appellee, whether collected as taxes in proportion to the rental value of privately held land, or from water tolls or the "rents, issues and profits" of any land against which the taxes are delinquent for the three year period of

redemption allowed. These tax-enforcement provisions of the act were recently studied and construed by this Court in *Fallbrook v. Cowan,* 131 F. (2d) 513, and the United States Supreme Court denied certiorari.

The California Court further held in the *Moody v. Provident* case, supra, that because of the trust character of the property securing the bonds, no suit can be brought, and that the statute does not begin to run against any matured bond or coupon until the money to pay them had been collected, and notice given.

Appellee seems to recognize that State law and decisions still may control the rights of bondholders, when he suggests at page 7:

> "This Court is thoroughly familiar with the rights of an irrigation district bondholder in California."

The time limitation in the final decree, if it stands, will operate to deprive appellant of his established right to wait for the money lawfully owing to him as a *cestui que trust.* There is no time limitation embodied in the Merced or Glenn Colusa Irrigation Districts' final decree. Appellee points out no section of the Bankruptcy Act authorizing any time limitation, nor any State law or decision permitting it.

Appellee has not and can not allege any possible harmfulness if this Court allows appellant to wait, unless he fears to permit appellant to have the time necessary to "prosecute an action in the State Court to require public officials to account, as public trustees" and that "the State Court will incorrectly determine the rights of the parties".

The time limitation in the final decree for the reasons shown does deprive appellant of a valuable property right. Therefore, it should be stricken from the decree.

SECOND PROPOSITION.

With all deference to the opinion in the *Mason v. El Dorado* case, cited by appellee, appellant plans to petition the United States Supreme Court for a writ of certiorari in that case, and seek a ruling on this proposition.

It is respectfully submitted that the interlocutory decree did not authorize distribution, whether of cash or new bonds. It is appellant's contention, that without the consent of creditors, the Court is wholly lacking in jurisdiction to issue any order or decree, interlocutory or final, and that the consent of the debtor is equally a prerequisite to jurisdiction, for every step in the proceedings.

Although other questions were involved in the *Wright v. Coral Gables* case, 137 F. (2d) 192 (certiorari denied Mar. 13, 1944), the question of whether the creditor consent requisite under Chapter IX can survive the cancellation of the bonds forming the base upon which the consent rested, was resolved, and we believe aside from whether the plan had ever been abandoned or not.

See also

In re West Palm Beach, 96 F. (2d) 85 (C. C. A. 5).

The Fifth Circuit Court of Appeals in *Green v. City of Stuart,* 135 F. (2d) 33, held squarely that:

> "Chapter IX is a special exercise of the bankruptcy jurisdiction, is dependent on State consent, and is limited to that consent."

While the amended Chapter IX omitted any provision for the State consent, contained in the original Chapter IX, the United States Supreme Court in the *Faitoute v. Asbury Park* case, supra, adheres to the view that the present Chapter IX is a special exercise of jurisdiction under the bankruptcy clause, and that there are specific limitations imposed upon jurisdiction for proceedings under this chapter.

It seems to appellant that if consent of creditors, once given "extends throughout the proceedings", so must any debtor consent, and State consent. If this is true, it would manifestly be impossible for a debtor to drop any plan, once its consent had been given, unless the Court was willing.

But, under Chapter IX the Court can not make any order compelling action of any sort by the debtor, at any stage of the proceedings.

This interpretation is also placed upon Chapter IX by Giles J. Patterson, Esq., former Chairman on the Municipal Law Section of the American Bar Association, quoted on page 13 of appellant's opening brief.

Ware v. Crummer & Co., 128 F. (2d) 114;
Spellings v. Dewey, 122 F. (2d) 652.

Appellant respectfully submits that if his argument that the valid consent of creditors "is necessary and

applies to every step in the proceedings'' shows a ''misunderstanding of the Act'', he is not alone in his ''misunderstanding''.

Appellee does not deny that all the original bonds, upon which the creditors' consent rested, were cancelled some time before it filed its motion for a final decree, seeking a ''discharge'', and that the consenters were no longer acceptors, but had been fully settled with and were therefore without any interest entitling them to be counted as voters before the Court on the propriety of the final decree, or its provisions.

The Supreme Court of the United States in *Nashville C. & St. L. R.R. Co. v. Walters,* 294 U. S. 405, at page 415, said:

> ''A statute valid as to one set of facts may be invalid as to another * * *'' and ''* * * a statute valid when enacted, *may become invalid by a change in the conditions to which it is applied.''* (Italics supplied.)

Therefore, because of the ''change in the conditions'', as above, and not denied by appellee, jurisdiction ceased upon the cancellation of the acceptor's bonds, and the decree should be set aside.

THIRD PROPOSITION.

On June 22, 1944, the Court of Errors and Appeals, being the highest Court in the State of New Jersey, finally settled this same basic question, after 10 years of continuous litigation. According to the New York

Times of June 23, 1944, on page 22, that Court by a vote of 10 to 4 sustained the decision of the Chancery Court in *Wilentz v. Hendrickson,* 33 Atl. (2d) 366, which had ruled:

> ''A gift of public funds or property to a private corporation is unconstitutional whether made directly or indirectly; and the annulling by the Legislature of a financial obligation due from such a corporation to the State, is (unless supported by some legal, equitable, or moral consideration therefore) such a gift, and hence invalid.''

The highest New Jersey Court is reported in the New York Times as having declared in this hard and important case:

> ''They (the taxpayers) chose persistently and consistently to resist their payment (of the taxes) year after year until the total tax debt, principal and interest, has reached the sum of about $60,000,000 or more. They may not now capitalize upon a situation which they voluntarily created, however painful it may now be.''

The lack of authority of a Bankruptcy Court to abrogate the same State tax property rights in a proceeding under Section 77 of the Bankruptcy Act was recently decided by the Third Circuit Court of Appeals in *Central R.R. of N. J.,* 136 F. (2d) 633, reversing a prior ruling by the same Court. Petition for writ of certiorari was filed with the United States Supreme Court on December 10, 1943 in this case, under the name of *Pitney v. New Jersey,* and was denied.

The Second Circuit Court of Appeals, on February 9, 1944 (U.S. L.W. 2453), reversed its earlier ruling in *Lyford v. New York,* 137 F. (2d) 782, of August 6, 1943, by saying:

> "The State of New York is held to have valid first lien against property of debtor in reorganization proceedings for amount due on default, subsequent to reorganization proceedings, in payment of installments of debt due State for money advanced debtor for expenditures incurred in eliminating grade crossings under statute providing that, upon default in payment of installments, amounts due shall be apportioned and assessed as a tax and become a first and paramount lien."

The analogy is complete. The highest California Court has fully settled that all taxes payable to appellee are property "owned by the State". These citations are pointed out in appellant's opening brief, and are only countered by citing federal cases involving interlocutory decrees under Chapter IX. Manifestly, the point raised by this proposition could not have been raised as an actual controversy in an interlocutory decree, because nothing in that decree operates to cancel the contract in the bonds, or to exonerate landholders of their lawful obligation to pay taxes. Their duty to pay taxes as required by the Constitution and laws of California can only stop after appellant's bonds have been meted out the "death sentence" contained in the final decree. Hence, it is only in an appeal from a final decree that this proposition can be actually determined.

In further support of this proposition, the following excerpt from the *Jones v. Williams,* 155 N. C. 179, 71 S. E. 222 (1911), opinion of the Supreme Court of North Carolina seems directly in point:

> "There is no analogy between this case and those where sales are made under a power contained in a mortgage or deed of trust, or under execution issued upon a judgment, for in the former case when the party acts under a power he is proceeding out of court, and in the case of an execution he is proceeding under a statutory power or mandate, and the court is not called upon to exercise its equitable jurisdiction and do what is manifest justice as between all parties interested. The plaintiff is merely enforcing a right acquired at law by legal process and that is all. In such cases, third parties (holding mortgages or other private liens) must be vigilant and take care of their interests."

The fundamental distinction between equitable Court proceedings, and those arising under statutory powers or mandates, is ably discussed in an article in the North Carolina Law Review, April 1944, by Peyton B. Abbott, Esq., "Summary Procedure for Foreclosing of Taxes in North Carolina".

The Supreme Court of the United States, in another case involving the same basic question raised by this proposition, held in *Missouri v. Ross,* 299 U. S. 72, that:

> "* * * special provisions prevail over general ones which, in the absence of the special provisions, would control."

Here the Court was referring to the provisions of the Bankruptcy Act embodied in Section 64 (a) and (b). The Court said:

> "Sec. 64 (a) requires the payment of all taxes * * * in the order of priority as set forth in (b) hereof * * * Congress in the face of these decisions has permitted paragraph (6) to stand for many years without change in its phraseology, although amending that portion of the Bankruptcy Act in other particulars. This is persuasive evidence of the adoption by that body of the judicial construction. * * * The contention is that unpaid taxes constitute debts and therefore fall within the 7th paragraph. But this conclusion must be rejected; for conceding that taxes are debts, they are carved out of the general provisions of paragraph (7) and put in a special class under paragraph (6) and thus fall within the rule that special provisions prevail over general ones which, in the absence of the special provisions, would control. * * *"

It appears that the Congress in enacting Section 83 of the Bankruptcy Act fully intended its Courts to give full faith to the provisions of Section 64 (a) and (b). In any case appellant finds nothing in Sections 81-83 which even by implication suggests that it is made immune from the provisions of Section 64, but on the contrary the provisions of Section 83 (c) and (i) clearly leave the special provisions of Section 64 controlling.

The bankrupt here is not a taxpayer, but a State tax collector with a trust duty to perform, which he would obviously like to get out of. The taxes he is in

duty bound to levy and collect are for money borrowed and are to be paid by private holders of land titles to the State of California. This continuing trust duty is well settled by the State Courts in the cases cited, and in *Selby v. Oakdale I. D.*, 140 Cal. App. 171.

In *People v. Adirondack Ry. Co.*, 160 N. Y. 225, 54 N. E. 689 (affirmed in 176 U. S. 335), the New York Court held that the sovereign State powers are

> "rights inherent in the State as a sovereign * * * They belong to the State because it is a sovereign, and they are a necessity of government. The State can not surrender them, because it cannot surrender a soverign power."

The Supreme Court of the United States affirming this constitutional rule in *Adirondack Ry. v. N. Y.*, 176 U. S. 335, at page 349, said:

> "But the sovereign power of the state can not be alienated, *and where exercised is exclusive.*" (Italics supplied.)

In *Seymour v. Wildgen*, 137 F. (2d) 160, the Tenth Circuit Court said:

> "What properties belonged to the bankrupt, what liens existed thereon, validity of such liens, order or priority among creditors and other cognate questions *are governed by State law and not by any provisions of the Bankruptcy Act.* § 70, sub. c, as amended 11 USCA § 110, sub. c." (Italics supplied.)

That State law governs private rights to the same sort of property (rent) was held squarely in *Skaggs*

v. Commissioner, 122 F. (2d) 721, where a conflicting federal claim under the tax clause had been asserted. (Cert. #866 was denied Mar. 2, 1942.)

The difference between the instant case and that case is that here the land rent belongs to the State, ahead of any private interest.

Provident L. C. v. Zumwalt, supra;

El Camino L. C. v. El Camino I. D., supra.

Thus, the sovereign power of the State has been exercised, as regards the rent of land within the boundaries of appellee, and having been exercised *"is exclusive"*.

In the case of *Pollard's Lessee v. Hagan,* 3 How. 212, the Supreme Court of the United States with great care construes the limits of Federal versus State powers over lands under the jurisdiction of each, and the meaning and force of constitutional provisions. It is there declared that as to Federal owned land within any State, the Congress never possessed any municipal sovereignty, jurisdiction, or right of soil in and to the territory of any of the new States, excepting the right over them of executing the trust, which trust was to provide for their disposition by cessions or sale. In *Coyle v. Smith,* 221 U. S. 559, the inability of the Congress to pass any law which will create inequality among the States was reasserted and affirmed, as it had repeatedly been held in *New Orleans v. de Armas,* 9 Pet. 224; *Groves v. Slaughter,* 15 Pet. 449; *I. C. R.R. v. Ill.,* 146 U. S. 387, and *U. S. v. Winans,* 198 U. S. 371.

The mere fact that appellant has a beneficial and continuing interest, as a *cestui que trust,* in the land rent taken by the final decree can not alter the true character of that property. It is the pledged "claim of a particular state", which may not be "prejudiced" by any Act of Congress without a violation of Clause 2, Section 3, Article 4 of the Constitution of the United States.

FOURTH PROPOSITION.

Appellee's effort to prove this proposition without merit is unconvincing. No controversy such as here was before the California Supreme Court in *Peoples State Bank v. Imperial I. D.,* 15 Cal. (2d) 397, and that Court was not called on to decide anything more than whether a district, such as appellee, could be given a right to "institute" proceedings under Chapter IX. The Imperial District interlocutory decree had not been entered at the time this opinion came down, so the proposition here presented could not have been raised or passed on by the California Court in the case cited.

Since the language quoted from the *Bekins* case (304 U. S. 27, 53),

> "The natural and reasonable remedy through composition * * * was not available under state law by reason of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation.",

the same Court in *Faitoute v. Asbury Park,* supra, at a later date appears to have modified if not reversed this language in the *Bekins* case when it approved an insolvency statute enacted by the Legislature of New Jersey.

As regards the language quoted from the *Bekins* case,

> "It (the State) invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue",

this is clearly dictum, not alone because Chapter IX as amended contains no provision for State approval, but also because there is no reason why the State can not pay the lawful obligations which it has authorized its governmental agencies to incur. That it can and should honor such obligations seems to have been clearly stated in *County of San Diego v. Hammond,* 6 Cal. (2d) 709.

In any event no authority is cited that prevents the State from keeping faith with appellant, who as the owner of the bonds at bar is the beneficiary of a trust created by the Constitution and laws of California, and which contract even if the State can now repudiate it, the State has no authority to enlarge the bankruptcy power belonging to Congress, so that Congress can empower its Courts to repudiate the contract embodied in the bonds owned by appellant, as the final decree in the case at bar did.

FIFTH PROPOSITION.

Appellee's "short answer" to this proposition is "short", but it may well prove to be no "answer", for the reason that this proposition could not possibly have been raised as an actual controversy prior to the decision in *West Coast Life v. Merced I. D.,* 114 F. (2d) 654, because that opinion involved an interlocutory decree only, and no "deprivation" of property such as is now objected to could have occurred in a proceeding under Chapter IX until final decree is entered, as here. Nothing asserted in the *Bekins* case, supra, repudiates either directly or by fair implication the following rule of law stated by the Court in *Ashton v. Cameron County,* 298 U. S. at 531:

> "The Constitution was careful to provide that 'No State shall pass any law impairing the Obligation of Contracts.' (Const., Art. 1, Sec. 10.) This she may not do under the form of a bankruptcy act or otherwise. *Sturges v. Crowninshield,* 4 Wheat. 122, 191. *Nor do we think she can accomplish the same end by granting any permission necessary to enable Congress so to do."* (Italics supplied.)

In this case the dissenting opinion, which was written by Mr. J. Cardozo, stated at page 534:

> "The Constitution prohibits the states from passing any law that will impair the obligation of existing contracts * * *"

In closing the argument on this proposition, it may be mentioned that none of the bonds owned by appellant mature until 1948 and then mature serially to 1965, and they are not subject to call prior to ma-

turity, under any circumstances. It may be also pointed out that long before the *Erie R.R. v. Tompkins* case (304 U. S. 64) it was the settled rule that the Federal Courts would follow the decisions of the State Courts in the interpretation of their own Constitution and statutes.

> *Forsyth v. City of Hammond,* 166 U. S. 506, at 518:
>
> "The construction by the courts of a state of its Constitution and statutes is, as a general rule, binding on the Federal Courts. We may think that the Supreme Court of a state has misconstrued its Constitution or its statutes, but we are not at liberty to therefore set aside its judgments. That court is the final arbiter as to such questions."

The final decree, as applied, takes vested property rights from appellant, a *cestui que trust,* and unlawfully gives them to private holders of land titles, who are thus relieved from their continuing duty, as land holders, to contribute taxes towards the support of appellee, in proportion to the rental value of the land each holds.

The decree does not and can not affect the rental value of any of the land within this district, but only increases the amount of the net rent remaining after taxes, for title holders to appropriate as unearned increment, and to capitalize into higher prices demanded for such land titles from every person seeking land for a home or farm.

Thus, the decree, in both legal and practical effect does as surely infringe the exercise of the borrowing power of a sovereign State as would a federal tax on the amounts payable by the terms of the bonds.

CONCLUSION.

It is the hope of the appellant that for the reasons advanced in his opening brief and in this brief that the drastic forfeiture device inserted in the final decree will not be countenanced. The statutory limitations referred to in the Bankruptcy Act, which are not modified by the provisions of Chapter IX and the constitutional immunity of these public bonds, have their root in the fundamental principle that a dual sovereignty can not be preserved if one of the parties to the relation is permitted to infringe the borrowing power of the other.

A maxim, however sound in itself, may be discredited by too frequent repetition, and this is perhaps true of the proposition that a right to tax involves a power to destroy. This proposition advanced in Mr. Pinckney's argument in *McCulloch v. Maryland,* 4 Wheat. 316 (1819), was adopted by Chief Justice Marshall, and has since been quoted by every assailant of tax laws. Nevertheless there is implicit in the proposition an inescapable truth—especially if the maxim is understood to mean that a power to tax connotes a power to control. Likewise, once the existence of the tax or bankruptcy power is enlarged to include the borrowing power of a State, it obviously

could not be controlled by a Court nor would it be in the power of a Court to discriminate between an act consented to by a State, and one designed to legislate the States out of existence. If the power is once conceded, it would be impossible to draw the line or distinguish the abuse of the power from its use.

While a Court is not to be stampeded by forebodings deemed by it to have no relation to the actualities of life, the fierce competition for taxes, and the possibilities of federal influence through fiscal control of States and their instrumentalities are sufficiently familiar to be reckoned as history rather than prophecy. A school district or other political subdivision of a State, with credit impaired because of the failure or refusal of taxpayers to willingly pay their taxes, would be a receptive grantee of federal relief and bounty; and the benefactor would not be prevented from exercising over the policies of the school board the influence and power gained through the relief granted.

There is perhaps a tendency on the part of appellant to attach undue concern to this aspect of his case. But with governments breaking under the unusual strains in so much of the world, and believing in the imperative necessity for the survival of State sovereign powers, especially the State's power to tax the value of land, we venture the suggestion that the instant case has a unique significance.

If the bankruptcy clause is finally held applicable to the kind of bonds destroyed in the final decree, the States will have lost an immunity long since imbedded

in American constitutional thinking and in our settled economic practice, and judicial approval will have been given to the process of abandoning the autonomy of the States through the subtle influence of the bankruptcy power.

It is respectfully submitted that the judgment of the District Court should be reversed.

Dated, San Francisco,
July 14, 1944.

J. R. MASON,
Appellant in Propria Persona.

Due service and receipt of a copy of the within is hereby admitted

this.....*day of July, 1944.*

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Attorneys for Appellee.

October 8, 1969

Mrs. Evans B. Mayo
2702 E. Seneca St.
Tucson, Ariz. 85716

Dear Mrs. Mayo:

Your letter addressed to City Hall was referred to us for reply. Fairhope was not incorporated until 1908 and does not keep any census records. You should be able to get the information from the Bureau of the Census, Washington, D. C., or probably from the Bureau of Vital Statistics, Des Moines, Iowa, where your birth should have been recorded.

If your birth is recorded in the Bureau of Vital Statistics at Des Moines that will be the easiest place to get the desired information. If, in 1910 you were only a transient resident of Fairhope it is quite possible you were not counted here so if you try to get the information from Washington you better give other places of residence for other times, where you may have been counted. Sorry not to be able to help.

Sincerely,

C. A. Gaston, Secretary

2702 E. Seneca
Tucson, Ariz.
Sept. 21, 1969

Fairhope City Hall
Department of the Census
Fairhope, Alabama

Gentlemen:

I need proof of my age. I lived in Fairhope at the time of the 1910 census and would like to find out if you have a record of my residence at that time.

My maiden name was Velma Knox and I was born in Des Moines, Iowa on January 14, 1908. I am the daughter of George Henry and Cora Mason Knox. There were three other children in the family; Irene E. Knox, Floyd B. Knox and J. Leslie Knox.

I would like to get a letter certifying that you have a record of my residence and age at that time if possible.

If you could let me know in advance what the fee would be I will send it.

Thank you,

Very truly yours,
Velma Knox Mayo
(Mrs. Evans B.)

HENRY GEORGE SCHOOL OF SOCIAL SCIENCE

Commerce and Industry Division

September
3
1959

Dear Cornie:

Thank you for checking your records.

My application for membership and fee will be going forward to you toward the end of the month.

Regrettably Marien and I shall not be able get to Fairhope this fall, much as we should like to see you and Margaret.

Sincerely,

John Lawrence Monroe
Director

Mr. C. A. Gaston
Secretary
Fairhope Single Tax Corporation
340 Fairhope Avenue
Fairhope
Alabama

Oct. 29, 1960

Dear John:

Enclosed is your membership certificate which should have been mailed to you earlier.

We are pleased to have you join our ranks and do hope that you and Marian will pay us a visit.

Sincerely,

C. A. Gaston, Secretary

HENRY GEORGE SCHOOL OF SOCIAL SCIENCE

Commerce and Industry Division

August
26
1959

Dear Cornie:

Thank you for all your good information.

Jennie L. Monroe, like my mother, was a great old-time Single Taxer.

My mother, ho wever, was Irene S. (Mrs. Frederick H.) Monroe. It is barely possible that my mother or father was a member of the Fairhope Single Tax Corporation. I rather doubt it, but it might be worth your checking. If neither was a member, please send me the necessary form for me to apply for membership on my own.

The Fairhope Courier is a welcome visitor each week. It recalls pleasant days when my parents spent two winters in Fairhope and I was a kindergarten student at the Organic School. It would be good to see you and Margaret again--here, or in Fairhope one day!

S i n c e r e l y ,

John Lawrence Monroe
Director

Mr. C. A. Gaston
Secretary
Fairhope Single Tax Corporation
340 Fairhope Avenue
F a i r h o p e
Alabama

Enclosure:
Application for Membership through
transfer of membership rights granted to
Jennie L. Monroe

Mrs. Perry Davis

The Business Beat

Report from Chicago

Henry George Fundamentals Revivified

By ROBERT C. NELSON, Staff Correspondent of The Christian Science Monitor

A dozen top-level Chicago executives and a reporter settled back in the warmly conservative private dining room of the Union League Club. Supper had been sumptuous, and now the after-meal discussion promised to be equally satisfying.

And it was.

For more than 1½ hours the businessmen and an able discussion leader—a professor of economics—talked frankly about achieving harmonious labor relations, how to increase productivity, reduce costs, eliminate burdensome taxation, cut governmental red tape, extend profitable markets, keep production going without periodic slowdowns and crackups, and how to achieve an atmosphere of freedom with incentives for the fullest use of creative faculties of all—labor and management.

* * *

How Henry George would have delighted in the evening. How proud he would have been of the forthright manner in which these businessmen talked about their companies and the importance of broadened understanding of basic economic principles. Henry George certainly would have grinned approvingly because his fame as economist and social philosopher stemmed from just this kind if inquiry into what he came to call the law of human progress.

He studied and wrote about economic philosopny throughout most of the last half of the 19th century. He examined the economic and social problems of industrial society. He studied what the classical economists had said. He watched the American economy expand.

He was particularly disturbed by the trends he perceived leading the nation toward increasingly centralized controls and boundless taxation. And he worked to develop in his thinking a philosophy of freedom indigenous to America as an answer to the collectivist theories of the Old World.

He saw the necessity of removing restrictive taxation on production and allowing the fullest incentives for use of the best land sites and natural resources of the nation.

* * *

Thus it was not surprising that in 1934, the inspiration of Henry George's philosophies, just as moving as they had been before his passing in 1897, led his followers in Chicago to establish an extension of a Henry George School of Social Science [illegible]ered two years earlier in New York City.

In 1935, John Lawrence Monroe, whose father had directed a Henry George Lecture Association from 1903 to 1929, became director of the Chicago school. Having traveled with his father for these lectures, John Monroe also was imbued with the importance of understanding economic principles as a first step in solving basic problems of industry, the individual, and the community.

In his 25 years of service, Mr. Monroe has guided more than 17,000 persons in Henry George study groups, arranged lectures, dinners, and conferences—all in this unique program to focus thinking about economics.

These works have won for him not only the respect of the Chicago business-industrial-financial community, but its genuine affection as well. More than 100 companies have taken part in study programs. The school—a not-for-profit operation — is financed largely by the participating contributions of these companies plus sustaining contributions from other interested companies and foundations.

There are branches of the Henry George School in 18 major cities of the United States and Canada, and overseas extensions in England, Denmark, the Union of South Africa, Australia, and Jamaica.

In each, the study method is clear and similar:

¶ Respect the integrity of the individual mind.

¶ Ask no one to accept a conclusion unverified by his own observation and untested by his own reason.

¶ Keep thinking wide open where the evidence is slender and the facts few.

¶ Utilize in the realm of economic inquiry the same laboratory means of establishing principles and arriving at conclusions as have opened storehouses of knowledge in the physical sciences and harnessed for mankind the physical forces of nature.

* * *

Recently, John Monroe took a moment to consider the satisfactions of work with this Henry George School activity. One recent graduating study group, at an airline headquarters here, impressed him, he said, because of the great "mutual love the participants showed for each other and for mankind" despite the great variety in their ethnic, skill, and education backgrounds.

And he also recalled the study group of union and management representatives — all from a single company—who had become near-enemies during weeks of company-union strife.

"During those first sessions we all were wondering just who would get hurt first," Mr. Monroe recalls. "But after five sessions you couldn't tell management from labor. Each man had turned away from personal grievances to a common search for basic principles.

"It seemed to me," says John Monroe reflectively, "that first they stopped being afraid of each other and then at the end of the course they had even stopped being afraid of the world. I guess that is my satisfaction, seeing others grasp the infinite potential of the individual and the universe."

Public Warned to Check P

Disadvantages May Easily Offset 'Rur

By W. Clifford Harvey
Real Estate Editor of The Christian Science Monitor

Living in the country has the advantages of distance views, acreage, and bargain prices—but these can be offset by the disadvantage that few families know about before they move into their "dream" houses.

The international governor of the Society of Residential Appraisers warns of this wide-scale movement into rural areas around the big city without careful checks on the many facets of "rurban" living that sap the time, energy, and money of the buyers. "Rurban" is the latest word for areas that are beyond the suburbs, yet not too far to get out of the metropolitan fringes.

Plenty of Space Sought

Lured into the hinterlands by the desire for privacy, a garden, long-distance views, space for children, a spot to raise animals, and plenty of space in which to relax, the "rurban-bound" home buyer often does not know and has not been advised of the problems of country living, according to William F. Franzen of Rockford, Ill.

The things that could happen to these buyers are manifold, he said, since some of them will settle on roads that are not usable at certain times of year, where commuting costs are exorbitant, forcing him into the two-car category, and where the repair of a utility breakdown often runs into long periods and high costs due to the distance

Steel Frames Cut Costs

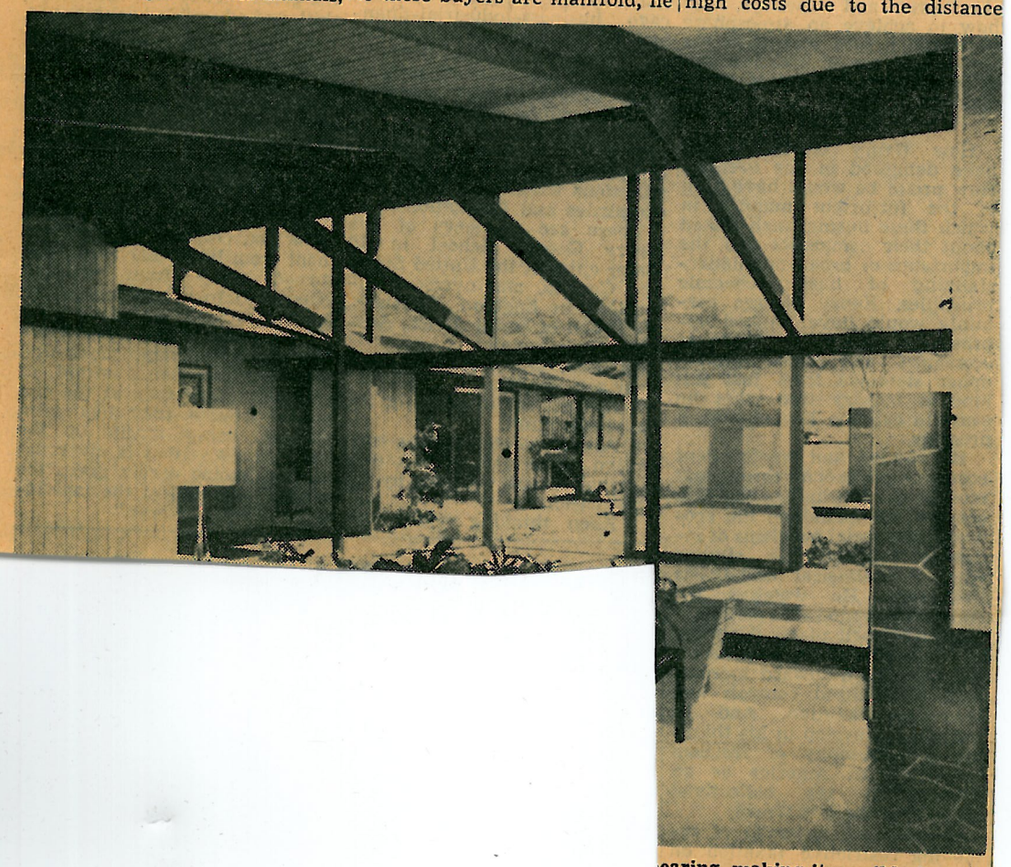
Special to The Christian Science Monitor

New York

Lighter, less-costly steel frames will help make 1960 a record year for the erection of one- and two-story structures such as warehouses, school gymnasiums, and churches, Steelways magazine says.

The lower cost of the new frames results from "the recognition of a greater range of load capacity in continuous frames than that indicated by initial yielding," said T. R. Higgins, director of research and engineering of the American Institute of Steel Construction.

"That's a fancy way of saying that a given load may be safely supported by a lighter steel frame than we've used before. And that means a less costly steel frame."



earing, making it possible to use glass panels for outside walls. ld a tings of the southwestern ong with Spanish-type courtyard.

REAL ESTATE DIRE

Indiana
(Continued)

McEWEN REALTY CO

Sept. 1, 1959

Dear John:

I have examined the membership records and and fail to find any record of the issuance of a membership certificate to either your father or your mother. Per your request I am enclosing an application form which you will find is the same except as to the consideration.

As you may have noted in Council Proceedings published in the Courier, the customary procedure is for the president to appoint a couple of members to examine an applicant for membership. In your case I believe the council would waive such procedure and vote acceptance. But, why not come down and present your application in person? Accept this as an invitation to you and Marian to visit Cornie and Margaret on the occasion.

Sincerely yours,

Aug. 22, 1959

Mr. John Lawrence Monroe, Director
Henry George School of Social Science
236 North Clark St.
Chicago 1, Illinois

Dear Mr. Monroe:

We are in receipt of your enquiry of August 14 concerning membership in our corporation. Enclosed is a copy of our constitution and other papers pertaining to the corporation. You will note on page 2 of the constitution the Article entitled Membership.

An examination of our membership records shows that Certificate No. 85 was issued to your mother Jennie L. Monroe, January 7, 1911, she having secured a transfer of the certificate issued to J. A. Hagstrom. I would presume that you are entitled to have a transfer made to you of your mother's membership rights. Is the certificate in your possession?

Memberships are not only open but we realize that the life of the Colony depends on the continual adding to the membership roll of dedicated singletaxers, preferably resident members, but by no means to the exclusion of non-residents. We urge prospective local members to attend the Henry George classes conducted here from time to time, before making application for membership. In passing upon applications we try to insure against future dissension such as led to the Melville suit against the Colony.

Margaret and I have very pleasant recollection of our sojurn in Chicago and our association with fellow Georgists and the many other fine Chicagoans. Many there as here have gone to their reward but it is gratifying to know that you and others are continuing to work for the establishment of economic justice. We shall hope to hear from you soon.

Sincerely yours,

_____

Secretary

HENRY GEORGE SCHOOL OF SOCIAL SCIENCE

Commerce and Industry Division

August
14
1959

Fairhope Single Tax Corporation
F a i r h o p e
Alabama

Dear Friends:

Will you please send me information on how a person can become a member of the Fairhope Single Tax Corporation, what the obligations are, and, if memberships are open, an application form.

S i n c e r e l y ,

John Lawrence Monroe
Director

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236 NORTH CLARK STREET · CHICAGO 1, ILLINOIS · CENTRAL 6-3348

Feb. 21, 1958

Dear Uncle Arthur:

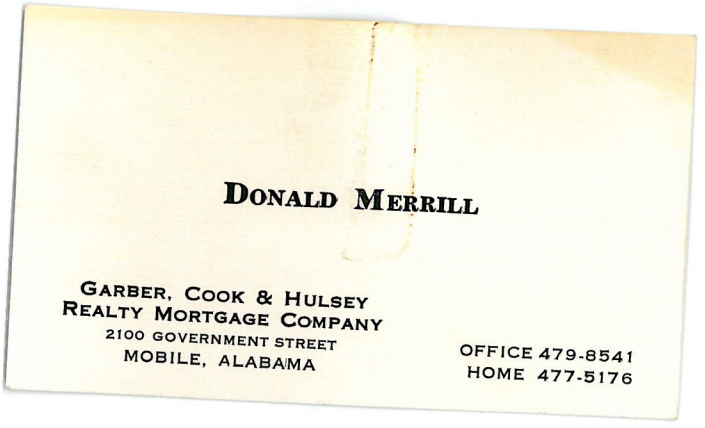
At last night's council meeting I was charged with a service I can happily perform, though I would have been far happier had there been no need for such service.

As a result of the inspiration of Sam Dyson it was moved and carried to direct the secretary to convey to Trustee A. H. Mershon, the council's sincere regret that he had the misfortune to fall and fracture his shoulder, and its ardent hope that he may have an early and complete recovery.

Needless to tell you we all join in the council's regret and in its hope for your early and complete recovery.

Most Sincerely yours,

C. A. Gaston, Secretary


DONALD MERRILL
GARBER, COOK & HULSEY
REALTY MORTGAGE COMPANY
2100 GOVERNMENT STREET
MOBILE, ALABAMA
OFFICE 479-8541
HOME 477-5176

REALTY MORTGAGE COMPANY

SUITE 600 BANK FOR SAVINGS BUILDING

BIRMINGHAM, ALABAMA 35201

E. F. BLANKENSHIP
EXECUTIVE VICE PRESIDENT

April 14, 1964

Mr. C. A. Gaston, Secretary
Fairhope Single Tax Corporation
Fairhope, Alabama

Dear Mr. Gaston:

We are interested in making mortgage loans in your city and particularly in the Single Tax Colony. In presenting this matter to our various insurance company outlets, we need certain information as follows:

1. How is the amount of rent determined in the 99 year lease?

2. Assuming that we make a loan to a borrower who constructs a house on the leased land, does the Corporation or Colony subordinate its right to the first mortgage or will it join in the execution of the mortgage?

3. In the event of foreclosure of our mortgage on the improvements, and assuming that the Colony has not subordinated or has not joined in the execution of the mortgage, is the lease automatically cancelled or does the foreclosure owner have the same rights under the lease as the original lessee?

4. In the event of foreclosure, does the foreclosure owner have the right to sell to anyone that it so desires or must it get permission or approval of the new purchaser from the Colony?

I will be grateful to you if you will answer the above questions so that we may pass this information on to our various principals and be in position to make mortgage loans.

Yours truly,

E. F. Blankenship
Executive Vice President

EFB/ar

CC: Mr. Don Merrill

Apr. 20, 1964

Mr. E. F. Blankenship
Executive Vice President
Realty Mortgage Company
Suite 600 Bank of Savings Bldg.
Birmingham, Alabama 35201

Dear Mr. Blankenship:

In reply to your April 14 letter of enquiry we enclose a copy of our constitution, a copy of our application for land form and a copy of our lease form. In Article VIII, Sec. 2 of the constitution you will note the basis for determining the distribution of rent charges. In paragraph (1) of the lease you will note that the rental charges on our leased lands are to be determined by the corporation's executive council. In the Application for Land you will note that the applicant testifies to his understanding that the rental value (charge) will increase as demand for the land increases, whatever the cause.

Our executive council gives consideration to all requests by prospective mortgagees for the corporation's assent to the mortgaging of its lessees' improvements and leasehold interests. Our assent form for conventional loans which has been accepted by Savings & Loan Associations, banks and individuals is as follows

STATE OF ALABAMA)
BALDWIN COUNTY)

The Fairhope Single Tax Corporation hereby assents to the mortgaging of the improvements and leasehold interests of _____ in the following described towit: _____ as per lease dated _____ to secure a loan from _____ for the sum of _____Dollars, and will protect the mortgagee to the extent of refusing to approve a transfer of said lease while the said mortgage remains in force without the consent of the mortgagee and in event of foreclosure of the mortgage will approve of a transfer of the lease to said mortgagee upon the signing of the customary application and lease contract.

To satisfy legal counsel of FHA and VA a somewhat different form is used if the mortgage loan is to be insured by FHA or VA.

You will note the corporation's prior lien as stated in paragraph 6 of the Lease is not waived and that the sale of improve-

ments under legal process shall work a forfeiture of all rights under the lease.

You will also note that, other than as provided in paragraph (11) on the Lease form, the corporation's lease transfer obligation is only to the mortgagee and that his retransfer privilege is limited to Corporation members and persons acceptable to the Corporation.

We will be pleased to answer any further questions or to furnish additional forms if desired.

Very truly yours,

_____
Secretary

CC: Donald Merrill