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- 1 Where a State Legislature authorizes a City to borrow money, issue bonds and tax all the property in the city to pay it, this is not a contract with the bondholders, that the State shall not afterwards exercise her power to modify the taxation, or exempt portions of the property from taxation.
2. The fact that a State by an Act of her Legislature, has stripped herself of any portion of her sovereignty, is not to be assumed unless the language used is too clear to admit of doubt.
3. If such a contract existed and if a subsequent law exempted some portion of the property, it does not lie in the mouth of a property-holder in the City to complain of it on the score of bad faith to the bondholders, if the bondholders themselves are silent.
4. A law authorizing a public corporation to contract a debt, and pay it by means of a tax, is not liable to the objection, that it takes private property for public purposes without compensation; for that clause of the Constitution is a limitation, not on the taxing power, but on the right of eminent domain.
5. The levying of taxes by a public corporation under the authority of State law, is the exercise of the taxing power, as much as the taxation of the citizens directly, for the support of the State Government.
6. The Constitution of Wisconsin, requires the rule of taxation to be uniform; and this means, that all kinds of property not absolutely exempt, must be taxed alike, by the same standard of valuation, equally with other taxable property, and co-extensively with the Territory to which it applies.
7. A tax for a special purpose upon the City of Sheboygan and levied exclusively upon real property, was a discrimination in favor personal property, in conflict with the Constitution of the State, and therefore void.

Appeal from the District Court of the United States for the District of Wisconsin.

Mr. Doolittle, of Wisconsin, for Appellant.

Mr. Howe, of Wisconsin, for Appellee.

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Mr. Justice SWAYNE. This is a suit in equity brought here by appeal from the District Court of the United States for the District of Wisconsin. The bill states as follows :

The complainant is the owner of a large amount of real estate in the City of Sheboygan, which is described in the bill.

On the 17th of January, 1854, the Legislature passed an act entitled "an Act to authorize the City of Sheboygan to aid in the construction of a railroad." This Act authorized the Commissioners named in it to borrow \$100,000 upon the credit of the City to be invested in the capital stock of a Railroad Company, authorized to construct a railroad from the City of Sheboygan westwardly by way of Fon-du-lac to the Mississippi River, and to issue therefor the bonds of the City according to the provisions of the act.

The act further provided that the City should annually levy a tax upon all the taxable property of the City sufficient, in addition to the dividends upon the shares of its stock in the Company, to pay the interest upon the bonds.

The act also authorized the City Council to submit to the qualified voters of the City the question whether the further sum of \$100,000 should be raised and invested in the same manner as the first \$100,000.

By an act of the Legislature of the 28th of March, 1856, entitled, "An Act to authorize the City of Sheboygan to aid in the construction of the Sheboygan and Mississippi Railroad," the City Council was authorized to subscribe \$50,000 to the capital stock of the Company, and to increase the amount of subscription from time to time until the aggregate should reach the sum of \$100,000. The instalments upon the stock subscribed were to be paid by the levy of an annual tax upon all the real estate in the City—not exceeding \$25,000 in any one year—until the whole amount of the subscriptions should be paid.

Under these Acts the City has made loans and issued its bonds therefor to the amount of \$200,000.

The Legislature passed a subsequent Act, which is as follows :

"Section 1. All taxes hereafter levied by the Common Council of the City of Sheboygan for the (payment) of principal or

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interest of any bonds issued or to be issued by said City to aid in the construction of any railroad, plank road, or for any improvement of the harbor at the mouth of the Sheboygan River, shall be levied by said Council on the real estate of said City exclusively.

“Sec. 2. All acts or parts of acts that conflict with the provisions of this act are hereby repealed.

“Sec. 3. This act shall take effect and be in force from and after its passage.

“Approved March 7, 1857.”

In the year 1857, the City Council under the last named act, levied a tax upon all the real estate within the limits of the City of six cents upon each dollar of the valuation thereof “for its harbor loans, railroad and plank road bonds,” “and did not levy said sum or any part thereof upon any other kind of property within said City of Sheboygan for the said harbor loans, railroad and plank road bonds, but levied the tax for the payment of the interest upon those specific objects entirely and solely out of the real estate within said City limits; and that the real estate above stated and set forth in this complaint was included in and was taxed at the rate aforesaid, and for the purpose aforesaid.”

At the time this tax was levied, there was personal property in the city of Sheboygan to the amount of three or four hundred thousand dollars, liable to taxation, and upon which no tax was levied for either of said purposes for the year 1857. The Act of March 7th, 1857, and the tax levied under it, are alleged to be void. Defendant, Geele, is the Treasurer of said City, and as such authorized to execute deeds for land sold for taxes when the time for redemption expires. The defendants' property in the City has been sold for said tax and bought in by the City. Geele threatens to execute deeds to the City for the same. The time for redemption is about to expire.

The deeds, it is alleged, will cast a cloud upon complainant's title, embarrass him in disposing of the property, and render it less valuable to him. The prayer of the bill is, that the Treasurer be perpetually enjoined from executing, and the City from receiving, such deeds, and for general relief. The complainant

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subsequently filed an amended bill, in which it was claimed that the Act of 1857, and the tax levied under it, were void, because the Act of 1854 provided that a tax should be levied upon *all* the taxable property of the City for the payment of said bonds, that the bonds were issued and taken upon the faith of that act and that its provisions constitute a contract with the bond holders, which the Act of 1857 seeks to violate.

The defendants demurred, and the Court sustained the demurrer.

Was there such a contract as is averred in the amended bill?

The Act of 1854 authorized the borrowing of money, the issuing of bonds, and the levying of a tax upon all the property in the City, for the purposes specified. The imposition, modification, and removal of taxes, and the exemption of property from such burdens, is an ordinary exercise of the power of State sovereignty. There is no pledge, express or implied, that this power should not thereafter be exercised.

Admitting that the State *could* enter into such an engagement, there is no evidence that it *did*. This fact should never be assumed unless the language used be too clear to admit of doubt. If the agreement existed, the complainant is not in a position to make the question. There is no allegation that the tax levied is insufficient. We hear of no complaint from the bondholders. They are not before us. It does not belong to the complainant, vicariously, to enforce their contract and protect their rights.

The objection, that these acts take private property for public purposes without compensation, and hence are within the prohibition of the State constitution upon that subject, is also without foundation. That clause of the Constitution refers solely to the exercise, by the State, of the right of eminent domain. *The People vs. The Mayor of Brooklyn*, (4 Coms., 419).

Is the Act of 1857 invalid, because it requires the tax in question to be levied exclusively upon the real estate of the city?

The provisions of the State Constitution, to which our attention has been called, as bearing upon the subject, are the following:

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Art. VIII. "Sec. 1.—The rule of taxation shall be uniform, and taxes shall be levied upon such property as the Legislature shall prescribe."

Art. XI. "Sec. 3.—It shall be the duty of the Legislature, and they are hereby required, to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and taxation, and in contracting debts, by such municipal corporations."

The Revised Statutes of Wisconsin, title 5, chap. 18, page 200, provide as follows:

"Sec. 1. All property, real and personal, within this State, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law."

"Sec. 4. The following property shall be exempt from taxation:

"All property, real and personal, of the United States and of this State. All public or corporate property of the several counties, cities, villages, towns and school districts in this State." * * *

"All property exempt by law from execution, not exceeding in value \$200.

"The personal property of all literary, benevolent, charitable and scientific institutions within this State, and such real estate as shall be actually occupied by them for the purposes for which they have been or shall be organized."

"All houses of public worship, and the lots on which they are situate," &c.

"All public libraries, and the real and personal property belonging to or connected with the same.

"The property of all Indians, who are not citizens, except the lands held by them by purchase.

"The personal property of persons, who, by reason of infirmity, age and poverty, may, in the opinion of the assessors, be unable to contribute towards the public charges.

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"All property, real and personal, belonging to any agricultural society in this State." * * *

No other property is exempted.

In *Weeks vs. The City of Milwaukee, et al.*, (10 Wis. Rep., 242, Mr. Justice Payne, referring to "the provision of Article II., Sec. 3, requiring the Legislature, in establishing municipal corporations, 'to restrict their powers of taxation so as to prevent abuses, &c.," says, "Restrictions may be and undoubtedly are necessary to prevent abuses which may not amount to a violation of the rule of uniformity. There may be *uniform abuse* of the taxing power by reckless and improvident management on the part of these local authorities, and I think the provision last mentioned was designed to give further protection—in addition to that furnished by the rule of uniformity."

Such was the unanimous judgment of the Court. Concurring in that opinion, we lay this section of the Constitution out of view.

In *Knowlton vs. The Supervisors of Rock County*, (9 Wis. Rep., 410,) the section requiring uniformity of taxation underwent an able and exhaustive examination. The Court affirmed the following propositions:

"The levying of taxes by the authorities of a county, city, or town, for their support is as much an exercise of the taxing power as when levied directly by the State for its support. The State acts by the municipal governments, and their acts in levying taxes are as much the act of the State as if the State acted by its own officers.

"The Constitution of the State requires, as a rule in levying taxes, that the valuation must be uniform and in all cases alike or equal, operating alike upon all the taxable property throughout the territorial limits of the State or municipality within which the tax is to be raised. And where the Legislature prescribed a different rule, the act is a departure from the constitution and therefore void.

"The Constitution has fixed one unbending uniform rule of taxation for the State, and property cannot be classified and taxed as classed by different rules.

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“The provision of the Constitution, that taxes shall be levied upon such property as the Legislature shall prescribe, does not sanction ‘a discrimination which provides for taxing a particular kind of property for the support of Government by a different rule from that by which other property is taxed; for when the kind of property is prescribed the rule of taxation must be uniform. All kinds of property must be taxed uniformly, or be absolutely exempt.”

In this case, under the provisions of the charter of the City of Janesville, lands within the City limits laid out into City lots, and other lands not so laid out, had been taxed at different rates, and the property of the plaintiff had been sold for the non-payment of the taxes. The Court held the tax void, and enjoined the treasurer from executing deeds to the tax purchasers.

In the case of *Weeks vs. The City of Milwaukee et al.*, (10 Wis. Rep., 242,) the preceding case was considered and approved by the Court. The proposition that the constitutional provision requiring the “rule of taxation to be uniform” extends to municipal corporations, and that the constitutional provision requiring the Legislature to restrict their powers of taxation was only intended to furnish a further protection, were expressly and unanimously re-affirmed. They held further, that where the assessors of the City of Milwaukee, in obedience to an ordinance of that City, omitted to assess property to the value of \$150,000, which ought to have been assessed, and that property was thereby exempted from taxation, the omission was fatal to the entire tax, and that the complainant’s taxes being increased by the omission he was entitled to an injunction to restrain the sale of his lands for such illegal taxes.

In *Sanderson vs. Cross*, (10 Wis. Rep., 282), the doctrines of *Knowlton vs. The Supervisors of Rock County*, were again unanimously approved.

In their opinion the Court adopt the following language, from the *City of Zanesville vs. Richards*, (5 Ohio State Rep., 589) “The General Assembly is no longer invested with the discretion to apportion the tax, and to determine upon what property and in what proportion the burden shall be laid. A uniform rate

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per cent. must be levied upon all property subject to taxation according to its true valuation money, so that all may bear an equal burden."

The Ohio case was decided under provisions in the Constitution of that State similar to those in the Constitution of Wisconsin, to which we have referred.

In the *Attorney-General vs. The Winnebago Lake and Fox River Plank Road Company*, (11 Wis. Rep. 42), the Court say: "It cannot be denied that under the power of exemption unjust enactments in respect of the power of taxation might be made. But those who framed the Constitution did not see fit to prevent such evils by depriving the Legislature of the power. But they did provide that whatever property was made taxable *at all* should be taxed by a uniform rule, which was designed to secure equality in the burdens as between the different kinds of taxable property, but of course not as between property taxable and that not taxable."

The Court refer with approbation to the *Exchange Bank of Columbus vs. Hines*, (3 O. S. Rep., 1.) In that case the Supreme Court of Ohio, say: "Taxing is required to be by a '*uniform rule*'—that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity not only in the *rate* of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment, as well as the rate of taxation. But this is not all. The uniformity must be coextensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must extend to *all property* subject to taxation, so that all property may be taxed alike—equally—which *is* taxing by a uniform rule."

We forbear to examine the soundness of the conclusions of the Supreme Court of Wisconsin. They need no support at our hands. We could add nothing to what they have so well and

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ably said in vindication of their own views. Such a discussion would encumber this opinion without throwing any new light upon the subject.

Acting upon a principle, recognized in its administration from the earliest period of its history, this Court considers itself bound in cases like this, to follow the settled adjudications of the highest State Court, giving constructions to the Constitution and laws of the State. (*Leffingwell vs. Warren*, decided at this term.)

The bill avers that at the time the tax complained of was levied, there was personal property in the city, of the value of from \$300,000 to \$400,000, liable to taxation. The demurrer admits this fact. The statute prescribing the property to be taxed, and that to be wholly exempted from taxation, shows that this personal property must have been taxed for other purposes. This tax was levied exclusively upon the real estate of the City. That was a discrimination in favor of the personal property. It was beyond the constitutional power of the Legislature to make any discrimination. Property must be wholly exempted or not exempted at all. No partial exemption or discrimination is permitted. To impose certain taxes exclusively upon one class of taxable property is as much a discrimination as to vary the rates of the same or other taxes upon different classes of property.

The latter was attempted to be done, as has been shown, in the City of Janesville. The tax was adjudged to be utterly void.

The same result must follow here.

A case illustrating more strongly than the case before us, the wisdom of the rule of the Constitution, as thus interpreted, and the injustice which may be done in departing from it, can hardly be imagined.

The Court below erred in sustaining the demurrer and dismissing the bill.

The decree is reversed, and the cause remanded for further proceedings in conformity with this opinion.