

File No. 36404 Continued

Code of 1906. Section 98 of the Article provides that the City Collector shall proceed in all respects for the collection of the amount as he does in cases where persons or property are assessed for benefits for opening, closing, widening or straightening any street, lane or alley; and Section 181 of Article 4 as it appears in the City Code of 1906, relating to the collection of benefits for opening, etc. streets, lanes or alleys, provides that the City Collector "shall proceed forthwith" to notify the parties of the amounts assessed and "warning them if the same are not paid within three months", he will proceed to sell the specific pieces or parts of property on which sums of money shall have been assessed and which remain unpaid. By combining these several acts and ordinances, it appears that the City Collector has authority to sell property for the non-payment of paving charges under the ordinance in question. The City Collector, however, did not proceed with the collection of the assessment in accordance with the provisions and limitations of Section 181.

The Court of Appeals in Fairmount Land Corporation vs. Baltimore City, 145 Md. 403, held that the "summary mode of collecting assessments by the sale of property is a special power, and must be exercised in the mode and manner, and under the limitation prescribed, and in no other way." The Court in so holding actually construed Section 181 above referred to. Applying the ruling of the Court in the case, I am of opinion that the City's power to make sale of the property after this great lapse of time is lost.

The second proposition suggested by the attorney for the owner is that the sum due cannot be collected in any event. For this there is quoted Section 1 of Ordinance 13, providing that "the amount expended in paving or repaving the same and the expenses of collection shall be recovered from the owner or owners of the property fronting thereon in proportion, etc. * ~~by suit against the owner or otherwise as provided by this ordinance~~", and also relying upon Section 843 of Article 4 of the Code imposing a four year limitation in which to make collection of taxes and that consequently the four year period having passed, it cannot be collected by suit against the owner.

The limitation, however, provided for in Section 843 of Article 4 has been held by the Court of Appeals in Gould vs. the City, 59 Md. 379, not to apply to the class of assessments here referred to as they