

TURNER *v.* STREET IMPROVEMENT DISTRICT No. 4,
WALNUT RIDGE.

4-7067

172 S. W. 2d 25

Opinion delivered May 24, 1943.

1. JUDGMENTS—RES JUDICATA.—Where suit was brought in chancery court to enforce liens for betterment installments, and property owners who had been assessed failed to defend, (although personally summoned) they cannot prevail at a belated date of their own choosing, nor will they be heard to say that formation of the improvement district and assessments were invalid.
2. JUDGMENTS—EFFECT OF FORMER SUIT.—In an action by bondholders to enforce collection of benefits assessed in municipal improvement district, a determination in Federal Court that the obligations asserted were subsisting debts necessarily involved validity of the District.
3. ESTOPPEL.—In paying assessments for several years on property alleged to be properly within the boundaries of a legally-constituted municipal improvement district, and in remaining quiet while bonds were being bought in reliance upon the security of lands claimed by the District to be within its area, taxpayers estopped themselves to assert irregularity of creative acts and procedure.
4. MUNICIPAL IMPROVEMENT DISTRICTS—LIENS.—Betterments are charges against correctly designated property and constitute a lien “. . . until such local assessment with any penalty and cost that may accrue thereon shall be paid.” Pope’s Digest, § 7306.
5. JUDGMENTS—WEIGHT OF EVIDENCE.—Contention of taxpayers that they had discharged obligations, and absence of credits on official records of municipal corporation, (with testimony by collection agents that such payments were not made) justified Chancellor in finding against claims of payment.

Appeal from Lawrence Chancery Court, Eastern District; *A. S. Irby*, Chancellor; affirmed.

mination of the Federal Court case. The District represented taxpayers. Each was equally bound. As was said in *Howard-Sevier Road Improvement District No. 1 v. Hunt*, 166 Ark. 62, 265 S. W. 517, (where a similar question was involved).

“The issue in the Federal Court case as to the validity of the bonds necessarily involved the issue as to whether there had been a valid assessment of benefits, for, if there was no valid assessment of benefits, there could be no valid issue of bonds. . . . As the District represented the taxpayers, it was bound to plead for them any defense that could have been set up which would have rendered the bonds invalid, and a good defense would have been that, for any reason whatsoever, there was no valid assessment of benefits. The District could, and should, have pleaded such defense for the benefit of the taxpayers.”

If *res judicata* concluded a taxpayer when he was vicariously represented by the District, *a fortiori* is he also concluded when, as in the circumstances of this case, there was a previous right to raise the issue and a failure to act. Placing on one side such fatal consequences as would flow from failure within thirty days to attack validity of the District in the manner and for the purpose set forth in the statute,³ appellants (upon whom personal service was had in the 1932 action) could have contested validity of the District and the assessments made against the four lots. But they did not make defense. Their failure then to litigate the questions here presented precludes relief at this time.

The law does not give to a taxpayer the right to challenge validity of an improvement district or of assessments at his convenience. A person who is party to litigation in which an essential issue *may* be raised must avail himself of defenses on penalty of thereafter being deprived of the right. Furthermore, appellants stood by while bonds were sold, and while proceeds were being applied to the improvements. For a number of years the assessments they now seek to recover were

³ Crawford & Moses' Digest, § 5652.

paid. Such conduct estops appellants. *Beloate v. Street Improvement District No. 2*, 203 Ark. 899, 159 S. W. 2d 451.

Third.—In municipal improvement districts “ . . . the assessment shall be a charge and lien against all the real property in said district . . . until such local assessment with any penalty and cost that may accrue thereon shall be paid.” Pope’s Digest, § 7306.

Other than in rural improvement districts (applicable to which, except as to certain exempted counties⁴ there is a special statute)⁵ limitation does not bar a suit to foreclose delinquent municipal improvement district assessments. *Martin v. Board of Commissioners of Street Improvement District No. 5 of Stuttgart*, 190 Ark. 747, 81 S. W. 2d 414. See, also, *New Netherlands American Mortgage Bank, Ltd., v. Little Red River Levee District No. 1*, 186 Ark. 965, 56 S. W. 2d 1016.

Fourth.—Although appellants contend they have paid certain of the assessments sued for, they do not produce receipts. The District’s records do not show the payments were made, and those who collected taxes testified the payments were not made. The Chancellor’s findings are not against the weight of evidence.

Affirmed.
