

FLAT BAYOU DRAINAGE DISTRICT OF JEFFERSON
COUNTY v. ATKINSON.

4-9220

232 S. W. 2d 76

Opinion delivered April 24, 1950.

1. DRAINS—ASSESSMENT OF BENEFITS.—Where interest on benefits was not computed when taxes were assessed for the purpose of producing a stated annual revenue, and property owners had not paid the benefits before maturities to avoid interest charges, maintenance work could be paid for from any residue shown after actual payments had been balanced against benefits *plus interest on the benefits*; and this could be done notwithstanding the fact that assessments had aggregated 125.8% of the betterments exclusive of interest.
2. DRAINS—MAINTENANCE WORK.—The District petitioned for compilation of interest and its assessment on benefits, and for authority to use such funds to “reconstruct, recondition, and repair” the original work. It was objected that land-owner petitions were necessary. *Held*, the intent was to proceed under Act 279 of 1909.

Appeal from Jefferson Chancery Court; *Carleton Harris*, Chancellor; reversed on defendant’s appeal; affirmed on plaintiff’s appeal.

A. F. Triplett, for appellant.

R. A. Zebold, for appellee.

GRIFFIN SMITH, Chief Justice. S. L. Atkinson as a property-owner of Flat Bayou Drainage District sought to enjoin the Commissioners from petitioning County Court to levy additional taxes against predetermined betterments of \$208,490.15 that were ascertained when the District was created under general laws in 1917. It was alleged that a new bond issue of \$91,000 for use in reconditioning, reconstructing, and repairing proposed by the District (a) could not be sustained from residual tax sources because levies made from time to time had, in the aggregate, exceeded the benefits by 25.8%, and (b) there was no intent to comply with the provisions of

were payable \$2,500 February 1, 1919, and then in varying amounts to and including 1939—a period of 21 years; but interest of \$2,695 was payable in 1918. It was found that \$187,266.75 would be required to discharge the principal and interest. The benefits were assessed at 4.3% to produce an annual yield of \$8,965.07. The assessing order [subdivision B] mentions “a tax sufficient to produce the sum of \$187,266.75, being the estimated cost of the improvement, including the interest on the bonds plus 10% for contingencies, and also a small additional sum annually for current expenses”.

On May 7, 1921, there was an additional judgment authorizing a \$30,000 bond issue “to hasten the work for which the District was organized”. The order assessed [subdivision B] “a tax amounting to the sum of \$140,800, with interest thereon at the rate of six percent per annum”. This “tax” was divided into installments, payable 5.3% during 1922, 1923, and 1924, producing \$11,049.97 annually; and for 1925 and succeeding years to and including 1939, 6% of the face of the assessed benefits, producing \$12,509.40.

Slight percentage changes in tax levies were subsequently made, but these do not affect the issue because it is conceded that the total shows 125.8% of the benefits when interest is not considered. This would be \$53,790.46 more than the primary sum of \$208,480.15.

Atkinson argues that interest on the borrowed money was included in the first tax order because of the mention of improvement costs, including interest on the bonds. But the order must be read in the light of what it did, and what it was intended to do. The bonds drew interest at 5½%, or \$5,390 for the first year. The first annual payment on principal was \$2,500 in 1919. A half year's interest payment was made in 1918—\$2,695. The total payment during 1919 was \$7,890, so there was a treasury balance of \$1,075.07 if we assume that the levy of 4.3% yielded the full return of \$8,965.07. Interest at six percent on the assessed benefits would have amounted to \$12,509.41. It will thus be seen that if interest at 6% on the assessments and a tax of 4.3 had been collected.

benefits. That assessment is merely the estimated benefit that will be conferred upon the land as a result of the construction of the improvement, and in the computation of that benefit it is immaterial whether the improvement is to be constructed with borrowed money or with cash already on hand.

It is our duty, however, not to construe the statute in such a way that it will be wholly ineffectual. I think the legislature must have meant that the assessment of benefits is not to bear interest in any district having total assessed benefits sufficiently large to equal or exceed the face amount of the bonds, interest thereon, and the usual margin for contingencies. That is the situation here, and therefore I think this district's assessed benefits should not bear interest, at least after the effective date of the 1941 Act. On the other hand, in districts where the original assessment of benefits was not large enough to "include" both the bonds and their interest, then interest on the assessed benefits would be available to pay the interest on the bonds. See *Oliver v. Whittaker*, 122 Ark. 291, 183 S. W. 201, for an instance of the latter situation.
