

GAULT *v.* NOLEN.

Opinion delivered May 7, 1928.

MUNICIPAL CORPORATIONS—IMPROVEMENT DISTRICT—MISTAKE IN FOOTING UP ASSESSED VALUE.—Where, in a proceeding for forming a street improvement district under Acts 1925, p. 548, the city council, in adding up the assessed value of real property in the improvement district, made a mistake as to the amount thereof, it had the authority at a regular meeting to correct such mistake.

Appeal from Yell Chancery Court, Dardanelle District; *John E. Chambers*, Chancellor; affirmed.

STATEMENT OF FACTS.

Appellant brought this suit in equity against appellees to enjoin them from the sale of bonds or from proceeding further with the construction of the proposed improved street in Improvement District No. 2, of Dardanelle, Arkansas. According to the allegations of the complaint, appellant is an owner of real property situated in said Street Improvement District No. 2, and appellees are the commissioners of said district.

Street Improvement District No. 2, of Dardanelle, Arkansas, was duly established on the petition of ten real property owners by ordinance of the common council of said town. On the 10th day of October, 1927, a petition was filed with said common council by real property owners in said district, asking that the improvement be made at a cost not to exceed one hundred per cent. of the total assessed valuation of the real property situated in the district. Legal notice of the filing of said petition was given as required by law, and on the day set for the hearing, to-wit, the 12th day of November, 1927, the common council adopted a resolution finding the said petition was signed by owners of real property within the district of the total assessed value of \$61,930, as shown by the last county assessment books made out by the assessor of Yell County, Arkansas, and that the total assessed value of all the real property within said district as shown by said assessment amounted to the sum of \$83,625. On the 2d day of January, 1928, at a regular

meeting of said common council, attended by the same members who were present at the meeting on November 12, 1927, a resolution was adopted that its finding at the previous meeting that the total assessed value of the real property in the district was \$83,625 was an error due to a mistake in adding up the values of the real property in said district as taken from the books of the assessor from the last county assessment roll. The council found that the true value of the property in the district as shown by said assessment roll amounted to \$81,825, and its finding was corrected so as to show the true value of all the property in the district as shown by the last county assessment roll amounted to \$81,825. The commissioners of said district made a report showing the estimated cost of the street improvement to be \$63,525.45, and are preparing to issue bonds for the payment of the cost of construction of said improvement, and have levied assessments upon the real property in the district to secure the payment of said bonds.

Appellees filed a demurrer to the complaint, which was sustained by the chancery court; and appellant, electing to stand upon his complaint and refusing to plead further, it was decreed that his complaint be dismissed for want of equity. The case is here on appeal.

Davis & Rollow, for appellant.

Hays, Priddy & Rorex, for appellee.

HART, C. J., (after stating the facts). The Legislature of 1925 passed an act to amend the general act relating to the formation of local improvement districts in cities and towns. Among other things it is provided that the petition for such improvement, signed by the majority in value of the owners of real property in the district, shall specify what percentage of the value of the real property as shown by the last county assessment the said improvement shall not exceed in cost. The section contains a proviso that no single improvement shall be undertaken which, alone, will exceed in cost fifty per cent. in value of the real property in such district as shown by the last county assessment. The section con-

tains a further proviso that an improvement may be made which does not exceed one hundred per cent. of the assessed value determined as above if seventy-five per cent. of the property owners in value in said district petition therefor. Acts of 1925, p. 548; Castle's Supplement to Crawford & Moses' Digest of the Statutes of Arkansas, § 5666.

The owners of the real property in the proposed street improvement district proceeded under the last proviso of the section of the act above referred to. In other words, they petitioned to construct an improvement not exceeding one hundred per cent. of the assessed value of the real property in the district as shown by the last county assessment; and in order to do this, seventy-five per cent. of the property owners in value were required to sign the petition. According to the allegations of the complaint, owners of real property of the value of \$61,930, as shown by the last county assessment, signed the petition which was presented to the council on the 12th day of November, 1927. At that time the council found the total assessed value of all the property in the district as shown by the last county assessment to be the sum of \$83,625. Nevertheless, the council proceeded with the establishment of the district.

If the finding of the council was correct, a mathematical calculation will show that seventy-five per cent. of the owners of real property in the district did not sign the petition. On the 2d day of January, 1928, at a regular meeting of the common council of said town, the same members of the council who were present at the meeting of November 12, 1927, adopted a resolution reciting that a mistake had been made in finding the total assessed value of the real property to be \$83,625. The council found that the error was due to a mistake in adding up the assessed value of the real property in the district as taken from the last county assessment, and that the true value of all the real property in the district as shown by the last county assessment amounted to \$81,825. The council amended its record to show

this latter sum to be the total value of all the real property in the district as shown by the last county assessment. If the council had the right to make this correction, then a mathematical calculation will show that seventy-five per cent. of the owners of real property in the district as shown by the last county assessment signed a petition praying for the construction of the proposed improvement at a cost not exceeding one hundred per cent. of the assessed value of the real property.

The sole reliance of counsel for appellant for a reversal of the decree is that the council had no right to change the finding made by it on the 12th day of November, 1927, as to the total value of all the real property in the improvement district as shown by the last county assessment. Now, according to the allegations of the complaint, this sum was found by adding up the assessed value of the separate valuations of real property in the district as shown by the last county assessment. A mistake was made in adding up these figures, and the council only attempted to correct such mistake at the meeting held on the 2d day of January, 1928. The same members of the council were present, and no effort was made to change the result in any way, the only change was to correct a clerical error or mistake in adding up a column of figures, which were a permanent record as shown by the last county assessment. The common council not only had the right to correct such clerical error, but it would seem to be its duty to do so. Under the statute, if seventy-five per cent. of the owners of real property in a proposed district sign a petition praying for the construction of a proposed improvement not to exceed one hundred per cent. of the assessed value of the real property as shown by the last county assessment, they have the right to do so and the council could not defeat their will by making a mistake in adding up a column of figures. The common council had complete and plenary power to correct a clerical error or mistake which it had

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made in arriving at the total value of all the real property in the district as shown by the last county assessment.

Therefore, the decree will be affirmed.
