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missioner, 82 F. (2d) 665 (C. C. A. 6th, 1936). The same result was reached when the owner of a building subjected to eminent domain proceedings conveyed after condemnation but before award. *Louis Schoen*, 30 B. T. A. 1075 (1934). But where a sales contract was no further along than the bargaining stage, the transferor escaped income taxes. *Isaac S. Peebles, Jr.*, 5 T. C. 14 (1945).

Logically, transfers of stock "dividend on" should come under this category, the declaration of the dividend being the determinative event, but it seems unlikely that the rule that dividends are income to the holder who receives them will be disturbed. *Matchette v. Helvering*, 81 F. (2d) 73 (C. C. A. 2d, 1936); cert. denied, 298 U. S. 677, 56 S. Ct. 942, 80 L. ed. 1398 (1936).

R. F. M.

TAXATION—SPECIAL ASSESSMENTS FOR LOCAL IMPROVEMENTS—PERSONAL PROPERTY LOCALLY SITUATED NOT SUBJECT TO ASSESSMENT. —Pursuant to W. Va. Acts 1935, c. 68, empowering municipalities to construct public works, including flood control projects, to be paid for by rents, tolls, fees, and charges other than taxation, the city of Huntington issued bonds to pay for building flood walls, with provision that the bonds should be retired by making an assessment on all real property benefited. In an attempt to refund the bonds the city extended the assessment to personalty as well as realty. Mandamus to compel the city clerk to countersign and attest the refunding bonds; writ denied. *Held*, that a special assessment of flood control improvement may not extend to personal property within the assessment district. *State* ex rel. *Huntington v. Heffley*, 32 S. E. (2d) 456 (W. Va. 1944).

In *Duling Bros. Co. v. Huntington*, 120 W. Va. 85, 196 S. E. 552 (1935), the supreme court had announced that a local assessment would come within the methods of paying for a flood control project, and stated that such assessment to the property benefited would not come within the definition of taxation. In the instant case the court, adopting the language of *Snetzer v. Gregg*, 129 Ark. 542, 196 S. W. 925 (1917), said that personalty is not to be assessed for such a project as flood control. The reasoning was that personalty could be moved in event of flood and so could not be benefited by local improvement. "The owner may be benefited in the enjoyment of the use of his personal property in that locality, but the property itself derives no benefit . . . The situs of the personal property follows the domicile of the owner." *Id.* at 546, 196 S. W. at 926.

The Arkansas decision held unconstitutional Ark. Acts 1917, No. 249, §14, in so far as it attempted to tax personal property for flood

control improvements. ARK. CONST. art. XIX, §27, provides that "Nothing in this constitution shall be construed as to prohibit the general assembly from authorizing assessment on real property for local improvement." No such provision relating to local assessment exists in the West Virginia constitution. However, the language of the court does not make it clear whether they follow Arkansas in holding the assessment of personalty for flood control unconstitutional or whether they merely hold it unauthorized under the existing act.

As to constitutionality, it has been held that a special assessment under this act is not taxation, *Duling Bros. Co. v. Huntington,* 120 W. Va. 85, 196 S. E. 552 (1935), therefore not within the uniformity clause of the constitution. W. VA. CONST. art. X, §1: "... taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law ... " This would seem to leave only the provision as to taking property without just compensation upon which to base a constitutional objection. W. VA. CONST. art. III, §8: "Private property shall not be taken or damaged for public use without just compensation: nor shall the same be taken by any company, incorporated for purpose of internal improvement, until just compensation shall have been paid, to the owner ..." It is submitted that such an objection is not void. Ownership of property is exercised only by its use and enjoyment; property can receive no benefit other than that which accrues to the owner.

The increase in value of realty to an owner, accruing from its being protected against flood, would seem parallel to the owner's benefit of using and enjoying personalty in comparative safety. A Texas opinion subjecting personalty to a levee assessment said, "It (personalty) with real property is equally subject to damage from overflow; and with perfect justness may be taxed for such an improvement." *Dallas County Levee District v. Looney,* 109 Tex. 326, 207 S. W. 310 (1918). The decision sustained under a constitutional provision setting up conservation districts and requiring that taxes be equally distributed, TEX. CONST. art. XVI, §59, a statute providing for an ad valorem tax on personal property as well as realty. Tex. Acts 1918, c. 44, p. 41. Texas also has a constitutional provision, TEX. CONST. art. I, §17, similar to West Virginia's as to taking property without just compensation. In Mississippi, by statute, levee commissioners have been empowered to fund bond issues by a tax on all property, real and personal, apportioned as to the front and back counties in the levee district. Miss. Laws 1884, c. 168, p. 140. Elsewhere personal property designated by statute as assessable for flood control improvements has included fishery products, *Buras Levee District v.*

Mialegvich, 52 La. Ann. 1292, 27 So. 790 (1900), (oysters taken from the sea), and products of the soil, *Landry v. Henderson,* 109 La. 143, 33 So. 115 (1902) (syrup and molasses), and such statutes sustained. Assessment of personal property for local improvements has not been confined to flood control. Indiana, *Gilson v. Rush County,* 128 Ind. 65, 27 N. E. 235 (1891) (assessment for purchase of tollroad), and Ohio, *Bowles v. State,* 37 Ohio St. 35 (1881) (assessment to construct free turnpike), have sustained the assessment of personalty for road improvement. Both have constitutional provisions similar to West Virginia's on taking property without just compensation. IND. CONST. art I, §21; OHIO CONST. art. 1, §19.

If the instant decision means only that the statute does not authorize assessment of personalty for flood control improvement, the question is still open whether the legislature can constitutionally provide that a nonprofit flood control improvement may be paid for by local assessment on both real and personal property. It is submitted that both reason and authority indicate an affirmative answer. W. C. M.

TAXATION—SYSTEMATIC PROPORTIONATE OVERVALUATION—SPECIAL CLASSIFICATION OF MONEYS AND CREDITS OF BUILDING AND LOAN COMPANIES.—The assessor valued moneys and credits of appellant building and loan associations at full value; moneys and credits of other taxpayers in the county were systematically assessed at approximately 70% of full value. The county court reduced the valuations of appellant companies approximately 30% to bring them in line with assessment of moneys and credits. The circuit court reversed the county court and restored the valuations as fixed by the assessor. *Held,* affirmed. Systematic proportionate overvaluation was not subject to correction by proceedings for reduction of the assessments to the ratio to taxpayers of a different class. In re *Charleston Federal Savings & Loan Ass'n,* 126 W. Va. 506, 30 S. E. (2d) 513 (1944).

In a leading case on disproportionate assessments, *Sioux City Bridge Co. v. Dakota County,* 260 U. S. 441, 43 S. Ct. 190, 67 L. ed. 340, 28 A. L. R. 979 (1923), a reduction in valuation was allowed when real estate of a bridge company was systematically assessed at a higher rate than other real estate. West Virginia followed that holding in *West Penn Power Co. v. Board of Review & Equalization,* 112 W. Va. 442, 164 S. E. 862 (1932). The *Sioux City Bridge* case was limited by *Nashville, Chattanooga & St. Louis Ry. v. Browning,* 310 U. S. 362, 60 S. Ct. 968, 84 L. ed. 1254 (1940), which allowed the state to apply different yardsticks to different distinct classes of property. The instant case distinguishing