The Taxation of Land Values in California

As the writer of this article states, "If there is one basic principle imbedded in our Constitution, constituting its very warp and woof, it is the so-called 'doctrine of immunity,' which means that Congress is wholly lacking in power to interfere, directly or indirectly, with the borrowing power of a State or any of its political subdivisions, or to control or regulate in any degree the tax rates on local property contrary to the State laws."

How this principle is being attacked in California, the State which has gone further in the collection of economic rent than has any other in the Union, is related here by J. RUPERT MASON, *San Francisco business man, a nationally-recognized authority in irrigation and reclamation matters and the leader in the fight to prevent his State's forward-looking legislation from being scuttled.*

✶ ALTHOUGH THE "market value" of land reached boom levels during the nineteen twenties in both Florida and California, the deflation and losses by citizens who did not unload before 1929 were much more drastic in Florida than in California. The losses and ruin to those who had paid high prices for title deeds to land in these and other States was a very real contributing factor in creating the 1929 panic without any doubt. There is a reason why the profits of California land speculators never attained the dizzy heights of their brethren who operated in Florida lands, and too few know just what that reason is.

Henry George, who lived and wrote in California, is the man that should be thanked by those who have lost money speculating in land in that State, because, had it not been for him and the influence of his writings, their losses would surely have been much greater. The year his famous book "Progress and Poverty" was finished (1879) the following provision was incorporated in the Constitution of California and is still there:

> "The holding of large tracts of land, uncultivated and unimproved by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property."

Since then, the Legislature of California has enacted laws which permit many different kinds of local units of government to collect their necessary revenues from annual taxes levied strictly in proportion to the assessed value of the land, and exempting from taxation all buildings or improvements of every sort. These units have borrowed large sums under such laws to finance the cost of public improvements such as roads, irrigation and drainage systems, hydro-electric power and municipal distribution systems, etc. The climate of California, being arid and semi-arid, it has been necessary

to construct vast water storage and supply reservoirs, canals, pipe lines, etc., for both domestic and irrigation needs during the long, rainless summers in all parts of the State. Instead of the State undertaking such public works directly, it enacted the law, widely known as the Wright Irrigation District Act of 1887. The obstacle encountered all too often by the Districts formed under this Act was big landholders who would neither improve the land, nor consent to let any one have it who would cultivate it.

After years of bitter and implacable litigation with such men, friends of Henry George who were in the State Legislature succeeded in getting enacted a history making amendment to the Act (Stat. 1909, page 461), which permitted, but did not require these districts to collect their necessary revenues by annually levying a tax, based on the assessed value of all privately held land, and exempting buildings, planted trees and improvements of every sort from tax. All districts previously organized promptly held elections, to permit their voters to choose under which tax policy they wanted future taxes to be levied. All voted decisively to exempt from taxation buildings and improvements. Since then, some 100 other similar Districts have been formed by vote of the people. These now embrace about 4 million acres of rural and urban land, including many sizable cities and towns. Not a single District has been willing to listen for an instant to any propagandist trying to induce them to revert to the old system of taxing improvements upon the land.

The Constitutionality of this Act has been attacked perhaps more often than any other public act in the history of the nation. It was sustained in three test cases that reached the Supreme Court of U. S. It has been upheld innumerable times by the California Supreme Court. But all of the attacks against it before 1929 pale into insignificance by comparison with those that have been begun since then.

The rental value of the land in these districts, over and above taxes levied to meet district expenses, had been capitalized by 1929, at more than one billion dollars. On the security of this untaxed rent, the banks, insurance companies and other lending concerns had invested many millions as mortgages. More than half of all the country real estate mortgages held by some of the more prominent of these financial institutions were made on the security of the untaxed rent, or "market value" of lands in these Districts. The State law provided that the annual tax or rent charge due the District became the first lien on the land, if not paid when due. If the rent was not paid within three years, the State law provided that title to the land became the absolute property of the District "free of all encumbrances," including mortgages or other private liens of whatever description. Thousands of mortgaged landholders found it impossible, soon after 1929, to keep up the payments on their mortgages and also to pay the rent required by many districts. This meant that it was up to the mortgage holders to put up the rent due the Districts, or see their mortgages wiped out, within 3 years.

Then began the most active campaign imaginable to get the law changed in various and devious ways, but always aimed to give the holders of mortgages more time than the law permitted, or in some way strengthen the rights of the mortgage holders by weakening the right of the districts to collect the rent due them, which ranked ahead of any property right belonging to any mortgage holder. Any reader interested in further details and the citations of the many court decisions by both state and federal courts in this connection is invited to make any inquiry desired through the Editor of THE FREEMAN.

In more than one District the operation of the law resulted in all mortgages and private liens being completely wiped out when the holders of such loans discovered that the District required the full rent value of the land in order to meet its expenses. Thus, the land in those Districts was relieved of the burdens previously resting upon it, and the law empowers each District to hold, lease, operate or sell any and all land that it acquires for unpaid rent or taxes, and the District is then entitled to the "rents, profits and issues," in lieu of those who had been previously appropriating the untaxed rent. But, this was too bitter medicine for the mortgage holders. They got Congress to enact the so-called "Municipal Bankruptcy Act." The U. S. Supreme Court held this act unconstitutional. In its decision that Court said:

> "Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has been attempted already. . . . The difficulties arising out of our DUAL FORM of government, and the opportunities for differing opinions concerning the relative rights of the State and National governments are many; but for a very long time this Court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. . . . Neither consent nor submission by the States can enlarge the powers of Congress."

But a little thing like a decision by the Supreme Court of the United States against them did not for a moment discourage the mortgage holding pressure interests. It was not long before another law, amended but slightly and designed to accomplish the same purposes, was passed by Congress. The amended statute got through with virtually no hearings by the Committee on the Judiciary of either Senate or House and virtually without debate or discussion on the floor of either House. It is 11 USCA 401-404. Meanwhile, several new judges were appointed, and they ruled that the Act is not beyond the power of Congress to pass. (304 U.S. 27)

Therefore, the law now seems to be that it lies within the powers of Congress to confer jurisdiction on its Courts to "save" any land or mortgage holder who

fails, neglects or refuses to pay the taxes or rent to the State as required by valid and binding State law, and to permit mortgages to escape the penalties fixed by State law, and to allow their holders, instead of the Districts, to pocket future ground rent, notwithstanding that the right of the District to such rent is ahead of that of any holder of a mortgage or other lien of any description upon the land. Hence, all previous interpretations of the powers belonging to the Congress have now been enlarged, to include control over the heretofore sovereign power of taxation belonging to the States. Always before the Courts have ruled that Congress has no more authority to release citizens from their lawful obligation to pay taxes due to a State or to one of its arms of government, to whom the State has confided its taxing power, than a State would have to release citizens from their duty to pay Federal income or other Federal taxes. Given this new power, there can be little question but that whenever the private appropriators of ground rent feel that State or local government taxes are taking more of the rent than they are willing to surrender, they can get "relief" from such obligations from the Federal Congress, and no State can stop it.

> "Congress may withhold jurisdiction from the State courts over any matter within the judicial power of the United States." Kalb v Feuerstein, 308 U.S. 433. (U.S. Supreme Court)

The private appropriators of rent in Germany were a little more direct in their scheme to change the laws of that country. On January 30, 1934 the German Reichstag passed the "Reconstruction Act," which provided in the First Article: "The representative assemblies of the States are abolished"; and in the Second Article: "The sovereign rights of the States are transferred to the Reich." Thus, Nazism was born in Germany. From that time, it was a simple matter to capture control of the Reichstag, and the powers and duties previously belonging to the States involving civil rights and land tenure rights were gone.

What effect this about-face on the part of our Supreme Court will have on any future attempt by the States to compel the private holders of land to contribute more rent towards the support of the State or one of its local arms of government is quite unpredictable. Given any power in that regard, there is no limit to the extent to which Congress can exercise the power when asked to do so. Any power residing in Congress is supreme over any attempt by the States to exercise the same power. (287 U.S. 261, 265.)

California applied its taxing power upon the value of land in the many hundreds of irrigation, road, and other public improvement Districts to a greater extent than has any other State, and perhaps any other nation, with the possible exception of Soviet Russia. The struggle to sabotage these State laws by selfish interests in seeking to direct more of the rent into their own pockets, has gone on incessantly for many years.

It does appear, at the moment, that they have succeeded, and the most alarming thing about it is the reluctance of attorneys generally to take enough interest to read the conflicting decisions by the Courts, and take any active interest in the struggle. They, all too often, are busy with cases of clients interested in collecting rent, rather than in surrendering more of it, to the State. That those who drafted our Federal Constitution foresaw this conflict appears crystal clear from reading The Federalist Essays, Nos. xxx to xxxvi, by Alexander Hamilton.

> "Suppose again, that upon the pretence of an interference with its revenues, it (Congress) should undertake to abrogate a land-tax imposed by the authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to THIS SPECIES of tax, which its Constitution plainly supposes to exist in the State governments? * * a law for abrogating or preventing the collection of a tax laid by authority of the State, (unless upon imports or exports) would not be the supreme law of the land, but a usurpation of power not granted by the Constitution." (The Federalist, No. xxxiii.)

This interpretation of the limitation on the powers vested in the Congress has been adhered to steadfastly in scores of cases decided by the Supreme Court of the U.S. for about 150 years. It would appear, however, that this interpretation does not find approval with the present members of the Supreme Court, although they have never squarely reversed the so-called rule of apportionment they laid down in the famous Pollock cases (157 U.S. 429; 158 U.S. 601); which is construed by many eminent lawyers to mean that Congress has no power to impose any tax based on the value of land, excepting under such rigid restrictions as would make the statute unworkable in practice. There are some recent decisions which may pave the way to modify that obstacle, and it is confidently believed by some that the present Court would uphold the Constitutionality of a simple statute to subject all privately held land to a Federal tax, in proportion to its value, and without requirement that the funds so derived be apportioned among the States, according to population.

Readers of this article are urged to discuss this with their friends in both the State and National legislatures, and with others, because the appropriators of private rent are working night and day and there is no assurance they will stop short of the total centralization of all powers in Washington, just as their fellow travelers achieved a similar end under the so-called "Reconstruction Act," enacted by the Reichstag January 30, 1934.

Eternal vigilance is the price of liberty, everywhere!

Tariff reformers are men who have too much sense to be protectionists but not enough to be free traders.