PROPERTY IN LAND AND THE FUNDAMENTAL LAW

[The following admirable summary of the legal aspects of the Single Tax was prepared by Judge James G. Maguire, of California, some years ago for the *Standard*.]

Private property in land is one form of social injustice which finds no protection in the doctrine of vested rights; but it is the settled and unquestionable law of our land that each state in the Union has a reserved right to take, at any time, the entire rental value of land by taxation for public uses. This reserved right, like every other legal rule affecting real property, has been incorporated, by operation of law, in every deed which the government or any private individual has ever given to any land lying within the United States. All private lands in our country are held subject to that reserved right, for the reservation of the right has always existed as matter of law; every man is presumed to know the law and to contract with reference to it, and every provision of law relating to the subject matter of any contract is to be construed as part of the contract itself. These are elementary principles of "text book law."

No lawyer will question any of the last three propositions; but the first, being new to general discussion, may at first blush be challenged, and I therefore deem it well to cite a few authorities in support of it; but first let me state a few elementary and almost self-evident propositions which may aid the general reader in applying the authorities.

(1) Whenever the grantor of a deed or the maker of any contract legally reserves to himself a power, to be exercised at his discretion over the land or other subject of the contract, that power is a legal right.

(2) The highest private title to land held by any person in the United States is a tenancy in fee simple.

(3) One of the conditions upon which all private lands were granted, and are now held, is that the owner shall pay such lawful taxes as the State, county and municipality within which it is situated shall, from year to year, or from time to time, impose.

Assuming these propositions to be unquestionable, I cite no authorities directly in support of them, although several of the authorities cited do incidentally support the third proposition.

The Reserved Right of Taxation

The right to take private property for public use (either by taxation or eminent domain proceedings) "does not spring from laws or constitutions, but is an inherent incident of governmental sovereignty..... This is a right inseparably connected with sovereign power, with or without its recognition by

the constitution."—Supreme Court of Pennsylvania in Extension of Hancock Street, 18 Pa., St. 30.

Speaking of the same governmental right, the Supreme Court of the United States says: "Such a power resides in the State government as part of itself, and need not be reserved when property of any description is granted to individuals or corporate bodies."—North Missouri R. R. vs. Maguire, 20 Wall., 60.

Extent of the Right and Power of Taxation

Justice Cooley in his great work on *Taxation*, which is now the standard legal text book, and which is recognized by the United States Supreme Court as a standard authority on the subject of taxation, says:

"The power of taxation is an incident of sovereignty, and is co-extensive with that of which it is an incident. All subjects, therefore, over which the sovereign power of the State extends are, in its discretion, legitimate subjects of taxation; and this may be carried to any extent which the government may choose to carry it. In its very nature it acknowledges no limits."—Cooley on Taxation, pp. 3-4.

The Supreme Court of the United States, in an opinion written by Chief Justice Chase, says: "The judicial cannot prescribe to the legislative department limitations upon the exercise of its acknowledged powers.

"The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts but to the people by whom its members are elected." —Veazie Bank vs. Feimo, 8 Wall., 548. See also Perham vs. Justices, 9 Geo., 341-352.

The Supreme Court of the United States, in an opinion by the illustrious Chief Justice Marshall, says: "The power to tax involves the power to destroy." —McCullough vs. Maryland, 4 Wheat., 427-8. And the same court, through the same chief justice, also says: "If the right to tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent within the jurisdiction of the State or corporation which imposes it which the will of such State or corporation may prescribe."—Weston vs. Charleston, 2 Peters, 465-6.

The Right to Confiscate by Taxation

Every State has the power to take private property for public use under what it known as the right of "eminent domain," upon making just compensation to the owner, but this is a right entirely different from and unconnected with the equally complete right of the State to take private property for public use by taxation without compensation.

The right of "eminent domain" is exercised against individuals singly, while taxation bears in equal proportion upon all individuals within the State or community. Hence, when the property of one individual is taken for public use while the same kind of property belonging to other members of the community is not taken, he should not bear the burden alone for the benefit of

all, and it is manifestly just that it should be borne in equal proportions by all who occupy the same relation to the public; but where the burden is general, of course there should not be, and cannot be, any such thing as compensation.

Besides, "eminent domain" takes the property absolutely, while taxation does not, even when it exceeds the market value of the property taxed; for by paying the tax the owner is always privileged to retain the property. For these reasons it has been uniformly held by the courts that the provision of a State constitution, "that private property shall not be taken for public use without just compensation, has reference solely to the exercise of the power of "eminent domain," and that "the levying of local assessments (for municipal improvements) is not taking private property for public use under the right of "eminent domain," but is the exercise of the right of taxation inherent in every sovereign State."—People vs. Mayor of Brooklyn, 4 Comstock, 419; Allen vs. Drew, 44 Vt., 187; White vs. People, 94 Ill., 611; Cooley's Constitutional Limitations, 497-8.

Subjects of Taxation and Right of State to Discriminate

Every State has the reserved power and right to select the subjects of taxation, the only limitation upon this right being that all persons of the same class and all property of the same class shall be equally taxed or equally favored. —Kentucky R. R. Cases, 115 U. S., 337; State R. R. Cases, 92 U. S., 576; Tennessee vs. Whitworth, 117 U. S., 129 and 139; People vs. Coleman, 4. Cal., 47; Lexington vs. McQuillan's Heirs, 9 Dana (Ky.) 517-18.

Upon this subject Justice Cooley says: "The general right to make exemptions is involved in the right to apportion taxes, and must be understood to exist wherever it is not forbidden."—Cooley on Taxation, p. 145.

In some States, as in California, the power of the legislature to make exemptions and discriminations between classes of property is either limited or withdrawn by State constitutional provisions, but the power and the right to select the subject or subjects of taxation still resides in the State, to be exercised by the people instead of the legislature. "It is an inseparable incident of sovereignty." See cases above cited.

Objects of Taxation

On this subject Justice Cooley says: "Revenue is not the only purpose of taxation.....In levying taxes other considerations not only are, but ought to be, kept in view; the question being always not exclusively how a certain sum of money can be collected for public expenditures, but how, when and upon what subjects it is wise and politic to lay the necessary tax under the existing circumstances, having regard not merely to the replenishing of the treasury, but to the general benefit and welfare of the political society, and taking notice therefore of the manner in which the laying and collection of the tax will affect the several interests in the State."—*Cooley on Taxation*, pp. 9 and 10.

"Neither is it necessary that the object of the tax should benefit the party who is required to pay, e. g., a tax for school purposes levied upon a manufacturing corporation."—Amesbury Nail Factory vs. Weed, 17 Mass. 5. 2.

The foregoing is a brief review of the legal and constitutional questions involved in the reforms proposed by the Single Tax programme in the matters of land and taxation. The authorities are selected from a very large number, all of which tend to support the same conclusions, and in the course of my investigation I have found no decision which is at variance with the views and conclusions herein stated.

I therefore confidently assert that the following positions are established beyond controversy by the highest judicial authorities in the United States, namely:

(1) The highest legal title to land in the United States is a tenancy in fee simple.

(2) That title gives the owner and his successors a perpetual legal right to the possession of such land, with certain exceptions which need not be mentioned, subject, however, to the condition that he or they shall pay such taxes as may be levied by the State and minor political authorities within whose jurisdiction such land is located.

(3) Such taxes are entirely within the discretion of the State, as a political sovereignty, and may be at any time increased to, or above, the full rental value of such land, the only limitation being that all land in the same taxation district shall be taxed in the same proportion.

(4) That each State has a reserved constitutional right, at any time, in its discretion, to exempt all other kinds of property from taxation, and to raise all revenue for public purposes by a single tax upon land values.

(5) That taxes on land are not required to be limited to the amount necessary for public revenue, but that the amount to be raised therefrom may be fixed by other considerations, and is in the discretion of the State.

(6) That all purchasers of land are conclusively presumed to have known the law and to have purchased subject to the rights and powers of the people, as above stated.

(7) That all of the rights and powers above enumerated are fixed and reserved by covenants incorporated by operation of law in every deed passing to or between private land owners.

It follows conclusively from the foregoing considerations and authorities that the people have the same reserved right to take the entire rental value of land by taxation from present owners, that a landlord has to raise the rent of his tenant under a covenent incorporated in his lease, either expressly or by operation of law. No complaint has ever been heard of the invasion of vested rights by landlords in enforcing this covenant against their tenants. If a tenant should claim that an increase of rent would be an invasion of his vested rights, his landlord and the courts would promptly answer: "You have no vested rights to invade. Your lease does not fix your rent, and you were bound to know the law which gave your landlord a right to raise it." That answer is conclusive as against the tenant but it is just as conclusive against landlord

when asserted by the people. If the landlord should object to giving up the rental value of his land for public use, let the people answer: "Your deed does not, and cannot, fix the amount of your taxes; and you, in purchasing the right of possession, were bound to know the law which gave the people a right to increase your taxes to the full rental value of your land; besides, you do not produce the rental value which you collect from your tenants, and you have no moral right to it, while the rental value which we demand from you is produced entirely by the general industry and enterprise of the whole people, and as a matter of natural justice, as also by the law of the land, it belongs to us."

Could demonstration go further than the highest courts of our nation have gone in maintaining and proving the right of the people to take for public purposes the rental values which they create?

LAND VALUES OF FARMS AND CITIES

The value of all farm land in the Pacific and Mountain states—California, Oregon, Washington, Idaho, Nevada, Arizona, New Mexico, Utah, Colorado, Montana and Wyoming, with a total area of 1,117,220 square miles, was less (in 1910) than the land value of New York City.

The value of all farm land in the South Central States—Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, Texas, with a total area of 609,255 square miles, was less (in 1910) than the land value of New York City.

SOUTH AMERICA

Events move rapidly in the progress of Single Tax in South America. Since the article on page 180 was printed there have been several interesting developments.

The Argentine National Government has decreed that no more public lands shall be sold. The decree affects some 200,000,000 acres. The Government has also instituted proceedings to recover lands obtained by fraudulent representations to the Department of Lands.

In The Argentine Province of Mendoza, the Radical Party took part in the Municipal elections in the Capital city, Mendoza, on a Single Tax program, and won the election. Since that event the new City Council has introduced a Single Tax Budget for application to the year 1918.

In Rio Grande do Sul (Brazil,) we have the extraordinary case of the Municipality of Garibaldi obtaining the regime of the Single Tax, by a co-operation of the State Executive in disregard of the letter of the Constitution, the same Executive actually advising the remaining Municipalities of its action, and tacitly inviting them to follow the example of Garibaldi.

NORTH DAKOTA

North Dakota made radical changes in its tax laws this year, (1917) practically taxing improvements only one-sixth as much as land. This is the furthest step taken toward the Single Tax by any State.

The constitution of North Dakota formerly required the general property tax; that is, the taxation of all property at the same rate. In 1914, the constitution was amended so as to permit classification, and apparently the text would allow the exemption of any class of property, although the legislature seemed to doubt its power to give entire exemption.

At the session of 1917 the assessable property of the State was divided into three classes. Class one comprises all land (both city and country) railroad, express, and telegraph property, and bank shares, to be assessed at thirty per cent. of its full value. Class three includes all household goods, wearing apparel, and structures and improvements upon farm land, such property to be assessed at five per cent. of its full value. The law provides that cities may by referendum vote bring their buildings within this classification. All other property is included in class two and is to be assessed at twenty per cent. of its actual value; this will include city buildings, unless otherwise voted.

The effect of these changes is, (1) that buildings and improvements upon farm land will be taxed only one-sixth as much as land, (2) that cities may bring their buildings under this provision, and (3) that otherwise city buildings will be taxed two-thirds as much as land.

Hon. F. E. Packard, a member of the North Dakota State Tax Commission, in commenting upon this legislation says:

"The peculiar thing about this classification was the perfect willingness of the farmer legislators to include acre property in the classification with railroads, bank stock, and other public service corporations. This is a very strong indication of the Single Tax sentiment among the farmers in North Dakota. As real property embraces 70 per cent. of all taxable property, it can be seen that this classification means something to the land owners of North Dakota."

This legislation is the result of a formidable movement among the farmers of the State, who organized the Farmer's Non-Partisan League last year and elected all State officials, except the treasurer, and an overwhelming majority of the lower house in the legislature. Their platform called for the exemption of farm improvements from taxation, but, as there was some doubt as to the constitutionality of complete exemption, the classification plan was adopted instead.