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I.

NATURE OF IRRIGATION DISTRICT

An irrigation district is a public or quasi municipal corporation.[1] It is created by order of the board of county commissioners pursuant to a petition of the landowners setting forth the boundaries of the district and only after an election has been held to determine whether the irrigation district should be organized.[2]

The Colorado statutes provide for three types of irrigation districts.[3] The first irrigation district act of Colorado was passed in 1901.[4] It was amended in 1903,[5] and was amended and codified in 1905.[6] It

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[1]Fisher v. Pioneer Construction Co., 62 Colo. 538, 544, 163 Pac. 851 (1917); 30 Am. Jur. *Irrigation* §78; Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112, 17 S. Ct. 56, 41 L. ed. 369 (1896); Lockhard v. People, 65 Colo. 558, 560, 178 Pac. 565 (1919); McCord Merc. Co. v. McIntyre, 25 Colo. App. 376, 379, 138 Pac. 59 (1914); Logan Irrigation Dist. v. Holt, 133 Pac. (2d) 530 (Colo. 1943); Northport Irrigation Dist. v. Henry Wilcox & Son, 131 Fed. (2d) 113 (C.C.A. 8th, 1942); Holbrook Irrigation Dist. v. First State Bank of Cheraw, 84 Colo. 157, 165, 268 Pac. 523 (1928); Stephenson v. Pioneer Irrigation Dist., 49 Idaho 189, 288 Pac. 421, 69 A. L. R. 1225 (1930); Tulare Irrigation Dist. v. Shepard, 185 U. S. 1, 22 S. Ct. 531, 46 L. ed. 773 (1902); Board of Directors of Alfalfa Irrigation Dist. v. Collins, 46 Neb. 411, 64 N. W. 1086 (1895). See Tingwall v. King Hill Irrigation Dist., 129 Pac. (2d) 898 (Idaho, 1942); Note (1922) 17 A. L. R. 81; LONG, IRRIGATION (2d ed.) §299; Loup River Public Power Dist. v. Middle Loup Public Power and Irrigation Dist., 5 N. W. (2d) 249 (Neb., 1942); King and Burr, *Handbook of the Irrigation District Laws of the Seventeen Western States of the United States*, p. 11 and cases cited; State *ex rel.* Clancy v. Columbia Irrigation Dist., 121 Wash. 79, 208 Pac. 27 (1922); Roberts v. Richland Irrigation Dist., 169 Wash. 156, 13 Pac. (2d) 437 (1932).

[2]COLO. STAT. ANN. (1935), ch. 90, §§380, 381.

[3]COLO. STAT. ANN. (1935), ch. 90, Art. 15 (1), §§377-431; ch. 90, Art. 15 (2), §§432-471; ch. 90, Art. 15 (3) §§472-487.

[4]Colo. Laws 1901, page 198.

[5]Colo. Laws 1903, ch. 123.

[6]Colo. Laws 1905, ch. 113.

was taken from the Wright Irrigation District Act of California, adopted in 1887.[7] Because of the many problems arising out of the organization of irrigation districts under the 1905 act, an irrigation district finance commission was established. A report was made by the Twenty-third General Assembly of Colorado (1921) to this commission. The report lists fifty-six irrigation districts in Colorado of which three were inoperative, eleven dissolved, and twenty-one in operation. Three were in litigation, two were illegally created, and twelve were defunct, and one was incomplete in organization.[8] The same session of the Colorado Legislature passed the Irrigation District Act of 1921, designed to remedy some of the difficulties of the 1905 act. This new act provided that any irrigation district could elect to operate under the act of 1921 by a two-thirds vote of its landowners.[9] Few, if any, districts availed themselves of this opportunity.

In 1928 there were twenty-seven operating irrigation districts in Colorado covering 537,280 acres of land. Thirteen inactive districts covered 324,733 acres of land. The 1940 irrigation census shows twenty-one irrigation districts covering 305,406 acres of land in Colorado, with a total investment in irrigation works of $15,621,957. Seven of these districts were $876,273 in arrears on their indebtedness as of December 31, 1939.[10] It has been said that a plentiful supply of bonds seemed more important to the promoters of these districts than a plentiful supply of water.[11]

The last of the three acts providing for irrigation districts is the Public Irrigation District Act of 1935.[12]

II.

REMEDIES FOR ENFORCEMENT OF OBLIGATIONS CONTAINED SOLELY IN STATUTES

Irrigation districts have been a rather fruitful source of litigation in Colorado and in other western states. The fundamental principles, upon which rest the rights and liabilities of an irrigation district, is that a district is a municipal corporation created under state law and possesses

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[7]CAL. STAT. (1887), p. 29; Anderson v. Grand Valley Irrigation Dist., 35 Colo. 525, 85 Pac. 313 (1906).

[8]*Report of the Twenty-third General Assembly to the Colorado Irrigation District Finance Commission.*

[9]COLO. STAT. ANN. (1935), ch. 90, §471.

[10]*Irrigation Districts, Their Organization, Operation, and Financing,* U. S. Dept. of Agr. Technical Bulletin No. 254; 1940 Census Irrigation of Agricultural Lands in Colorado.

[11]*Ahern v. Highline Irrigation Dist.*, 39 Colo. 409, 89 Pac. 963 (1907).

[12]COLO. STAT. ANN. (1935), Ch. 90, §§472-487.

only those powers vested in it by the legislature.[13] The law under which a district is created provides at one and the same time the measure of the rights and liabilities of the bondholder and the landowners, and that contract cannot be changed on behalf of either the landowner or the bondholder.[14] Bonds of irrigation districts may be either general obligation bonds or special or limited obligation bonds, according to the law and the decisions of each state.

In Colorado, bonds of an irrigation district are special obligations and are enforceable only in accordance with the remedies provided by law. The Colorado irrigation district law was held constitutional in *Anderson v. Grand Valley Irrigation District*.[15] The leading case which forms the basis for the Colorado rule and which has been followed by our courts in subsequent interpretations and applications of the rule is *Interstate Trust Company v. Montezuma Valley Irrigation District*,[16] where the court said on page 224:

> "The liabilities of the district are a charge upon the land ratably, with the acre as the unit, on which basis assessments are determined according to benefits. Back of each dollar of debt stands, ratably, the irrigable land of the district, the extent of which has been carefully and exactly ascertained. The law provides the method whereby warrant holders may take the land itself, at tax sale, in lieu of warrants if they so desire. This is the letter of their contract and this is the remedy they must have understood was provided for them, in the event of failure of payment of the warrants, when they assumed the relationship of creditor to the district. This manifestly is not repudiation, since the debtor stands ready to fulfill to the utmost the provisions of the contract according to its precise terms."

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[13]Yaden v. Gem Irrigation Dist., 37 Idaho 300, 216 Pac. 250, 252 (1923); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 Pac. (2d) 899 (1941); Upper Blue Bench Irrigation Dist. v. Continental National Bank and Trust Co., 93 Utah 325, 72 Pac. (2d) 1048 (1937); El Camino Irrigation Dist. v. El Camino Land Corp., 12 Cal. (2d) 378, 85 Pac. (2d) 123 (1938); Twohy Brothers v. The Ochoco Irrigation Dist., 108 Ore. 1, 210 Pac. 873 (1922); Bonneville Irrigation Dist. v. Ririe, 57 Utah 306, 195 Pac. 204 (1920); Note (1936) 105 A. L. R. 1027; Provident Land Corp v. Zumwalt, 71 Pac. (2d) 825 (Cal. App. 1937). See also Swedlund v. Denver Joint Stock Land Bank, 108 Colo. 400, 118 Pac. (2d) 460 (1941), as to drainage district powers; Bottoms v. Madera Irrigation Dist., 74 Cal. App. 681, 242 Pac. 100, 105 (1925).

[14]Straus v. Ketchen, 54 Idaho 56, 28 Pac. (2d) 824 (1933); Interstate Trust Co. v. Montezuma Valley Irrigation Dist., 66 Colo. 219, 181 Pac. 123 (1919); Peoples State Bank v. Imperial Irrigation Dist., 93 Pac. (2d) 1015 (Cal. App. 1939), 94 Pac. (2d) 370 (Cal. App. 1939), 15 Cal. (2d) 397, 101 Pac. (2d) 466 (1940); Merchants National Bank v. Escondido Irrigation Dist., 44 Cal. 329, 77 Pac. 937 (1904); Koch v. Colvin, 110 Mont. 594, 105 Pac. (2d) 334 (1940); Mulcahy v. Baldwin, 216 Cal. 517, 15 Pac. (2d) 738 (1932); Hershey v. Cole, 131 Cal. 211, 20 Pac. (2d) 972 (1933).

[15]35 Colo. 525, 85 Pac. 313 (1906).

[16]66 Colo. 219, 181 Pac. 123 (1919).

In Colorado each acre of land is liable only for its proportionate part of district indebtedness. There can be no cumulative levies.[17] Other western states, notably California, Washington, Idaho, Nevada, and Oregon,[18] do not follow the same rule but have held irrigation district bonds to be general obligations of the district. Montana and Utah, along with Colorado, hold the bonds to be limited obligation bonds.[19]

The primary and only source for the payment of warrants issued by an irrigation district is annual assessments.[20] The Supreme Court of California has held that an irrigation district bondholder was not entitled to reach funds from contracts by the irrigation district with power companies for the sale of electrical energy.[21]

It has been repeatedly held that the provisions of the irrigation district act for the enforcement of district obligations are exclusive and that no additional remedies will be implied which are not provided specifically by the law. This follows from the original premise that an irrigation district is a special assessment or local improvement district and a public corporation created by the legislature for special purposes and with special powers only. These powers are strictly limited under the familiar rule of grants of power to municipal or special or public corporations.[22] Colorado follows the rule of construing strictly statutes imposing special taxes.[23] Thus in *Gordon v. Wheatridge Water District*[24] the court stated:

> "Where the legislature fixes the method by which the bonds are to be paid, that method not only must be followed, but the

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[17]Interstate Trust Co. v. Montezuma Valley Irrigation Dist., *supra* note 14; Thomas v. Henrylyn Irrigation Dist., 79 Colo. 636, 640, 247 Pac. 1059 (1926); Rio Grande Junction Railway Co. v. Orchard Mesa Irrigation Dist., 64 Colo. 334, 171 Pac. 367 (1918); Henrylyn Irrigation Dist. v. Thomas, 64 Colo. 413, 173 Pac. 541 (1918); Board of County Commissioners v. Heath, 87 Colo. 204, 286 Pac. 107 (1930); Wilcox & Son v. Riverview Drainage Dist., 93 Colo. 115, 25 Pac. (2d) 172 (1933); Denver-Greeley Valley Irrigation Dist. v. McNeil, 80 Fed. (2d) 929 (C. C. A. 10th, 1936); Divide Creek Irrigation Dist. v. Hollingsworth, 72 Fed. (2d) 859, 92 A. L. R. 937 (C. C. A. 10th, 1934); Denver-Greeley Valley Irrigation Dist. v. McNeil, 106 Fed. (2d) 288 (C. C. A. 10th, 1939).

[18]American Falls Reservoir Dist. v. Thrall, 39 Idaho 105, 130, 228 Pac. 236 (1924); In re Lovelock Irrigation Dist., 51 Nev. 215, 273 Pac. 983 (1929); Noble v. Yancey, 116 Ore. 356, 241 Pac. 335, 42 A. L. R. 1178 (1925); State *ex rel.* Clancey v. Columbia Irrigation Dist., *supra* note 1; State v. Hartung, 150 Wash. 590, 274 Pac. 181 (1929); Roberts v. Richland Irrigation Dist., *supra* note 1, *affd.* Roberts v. Richland Irrigation Dist., 289 U. S. 71, 53 S. Ct. 519, 77 L. ed. 1038 (1933).

[19]State ex rel. Malott v. Board of Commissioners, 89 Mont. 37, 95, 296 Pac. 1, 18 (1931); Nelson v. Davis County, 62 Utah 218, 218 Pac. 952 (1923).

[20]Redmond Realty Co. v. Central Oregon Irrigation Dist., 140 Ore. 282, 12 Pac. (2d) 1097, 1099 (1932); Kollock v. Barnard, 116 Ore. 694, 242 Pac. 847 (1926).

[21]Mulcahy v. Baldwin, 216 Cal. 517, 15 P. (2d) 738 (1932).

[22]Yaden v. Gem Irrigation Dist., 37 Idaho 300, 216 Pac. 250 (1923).

[23]People v. Koenig, 37 Colo. 283, 85 Pac. 1129 (1906); Ahern v. High Line Irrigation Dist., 39 Colo. 409, 89 Pac. 963 (1907); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P. (2d) 899 (1941).

[24]*Supra* note 23 at p. 139.

bondholder's remedy is so restricted as to require him to seek payment of his bonds out of the revenues provided by the statute."

This rule has been applied by federal as well as state courts. In *Gas Securities Co. v. Nile Irrigation District*,[25] it was held:

"The bonds are of purely statutory origin and can look to no other sources of, nor security for, payment than those provided in the statute. The statute is definite and specific upon these matters. It follows that no lien extending such rights to other funds can be recognized. Since this judgment and its proceeds fall within the statutory provisions for payment or security of these bonds, no lien can be attached thereto in favor of the bonds."

In *Johnson v. Riverland Levee District*,[26] the same rule was applied. In *Payette-Oregon Slope Irrigation District v. Coughanour*,[27] the Oregon Supreme Court held:

"The plaintiff irrigation district, a quasi-municipal corporation, is a creature of the statute and possesses only those powers expressly or impliedly granted it by the legislature. It is also fundamental that the powers thus granted must be exercised in substantial compliance with the mode specified in the statute. The legislature having prescribed the method and manner of levying assessments, it follows that it must not be exercised in any other manner."

III.

RIGHT TO HAVE PROPER LEVY

There is one right given to district creditors in all western states. Proper levies must be made upon lands in the district.[28] The rule is

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[25]293 Fed. 365 (C. C. A. 8th, 1923).

[26]117 F. (2d) 711, 113 A. L. R. 326 (C. C. A. 8th. 1941). See also Twohy Brothers v. Ochoco Irrigation Dist., *supra* note 13; Duncan v. St. John Levee and Drainage Dist., 69 F. (2d) 342 (C. C. A. 8th, 1934); Street Grading Dist. v. Hagadorn, 186 Fed. 451, 456 (C. C. A. 8th, 1931); Rees v. Watertown, 19 Wall. 107, 22 L. ed. 72 (1873); Heine v. Levee Commissioners, 19 Wall. 655, 22 L. ed. 223 (1873).

[27]91 P. (2d) 526, 527 (Ore. 1939).

[28]Denver-Greeley Valley Irrigation Dist. v. McNeil, 106 F. (2d) 288 (C. C. A. 10th, 1939); Board of County Commissioners v. Heath, *supra* note 17; Henrylyn Irrigation Dist. v. Howard, 68 Colo. 236, 187 Pac. 653 (1920); Henrylyn Irrigation Dist. v. Thomas, 66 Colo. 296, 181 Pac. 979, 66 Colo. 300, 181 Pac. 980 (1919); Kerber Creek Irrigation Dist. v. Woodard, 76 Colo. 219, 230 Pac. 807 (1924); Rio Grande Junction Railway v. Orchard Mesa Irrigation Dist., *supra* note 17; Thomas v. Henrylyn Irrigation Dist., *supra* note 17; Clough v. Baber, 38 Cal. App. (2d) 50, 100 Pac. (2d) 519 (1940); State v. Melville, 149 Ore. 532, 41 Pac. (2d) 1071 (1935); Kollock v. Barnard, *supra* note 20. See cases collected 58 A. L. R. 117 citing cases from twenty-six states. Minority cases are those from New Hampshire and Virginia only; 38 C. J. *Mandamus* p. 776, §424; Johnson v. Riverland Levee Dist., 117 F. (2d) 711 (C. C. A. 8th, 1941).

universal that the right of mandamus lies for failure of the proper authorities to make a levy for the payment of district indebtedness.

But even the right of mandamus is not unlimited. California follows the rule of cumulative levies, provided action is brought within the proper time. However, the California Court of Appeals, in *El Camino Land Corporation v. Board of Supervisors of Tehama County,*[29] held that a writ of mandamus would not always be issued, stating:

> " 'The issuance of the writ is not altogether a matter of right, but involves consideration of its effect in promoting justice. The granting or refusing of the writ lies, therefore, to a considerable extent, within the sound discretion of the court where the application is made. Cases may, therefore, arise where the applicant for relief has an undoubted right, for which mandamus is the appropriate remedy but where the court may, in the exercise of a wise discretion, still refuse the relief.' 16 Cal. Jur. p. 768, sec. 7."

In that case the court refused a writ of mandamus which would result in a burden of $128.26 per acre against land in the district, twenty-five per cent of which was worth $25 an acre, ten per cent of which was worth $60 an acre, and sixty-five per cent of which was worth $20 an acre. The court found that the levy

> "* * * would yield no funds for the payment of the bond interest and bond principal but would throw the affairs of said district into a more complicated state of chaos and confusion and would be fatal to the landowners in said district, and said landowners owning lands would lose title thereto for nonpayment of assessments without benefit to the bondholders or holders of matured interest coupons."

Other courts have announced the same principle.[30]

IV.

MONEY JUDGMENT CANNOT BE ENTERED AGAINST DISTRICT

No judgment can be entered against an irrigation district based upon bonds, coupons and warrants of the district. In the case of *Henrylyn Irrigation District v. Thomas,*[31] the Colorado Supreme Court held that no money judgment will be entered against an irrigation district upon bonds or coupons. The same rule has been followed in California.[32]

[29]43 Cal. App. (2d) 351, 110 P. (2d) 1076, 1078 (1941).

[30]Snower v. Hope Drainage Dist., 2 F. Supp. 931 (W. D. Mo. 1933); Farrow v. Eldred Drainage and Levee Dist., 359 Ill. 347, 194 N. E. 515 (1935).

[31]64 Colo. 334, 171 Pac. 367 (1918).

[32]*Colo.:* Rio Grande Junction Railway Co. v. Orchard Mesa Irrigation Dist., *supra* note 17. *Calif.:* Moody v. Provident Irrigation Dist., 12 Cal. (2d) 389, 85 Pac. (2d) 128 (1938); Carpenter v. Glenn-Colusa Irrigation Dist., 14 Cal. (2d) 338, 87 Pac. (2d) 61 (1939).

In the case of an unliquidated claim in which no liability is admitted and the amount of indebtedness is undetermined, a suit will lie and a judgment may be entered.[33] An anomoly is presented by various cases in the federal court for this district in which judgments were entered.[34] The rule in the United States district court for the district of Colorado has been to enter a judgment in any case in which bonds, coupons, or warrants of a district were unpaid and suit was brought upon them. This is also true of the Moffat Tunnel Improvement District and other special assessment or local improvement districts in this jurisdiction. The federal court has followed the practice of entering judgment because under the old federal court rules mandamus was an ancillary remedy only,[35] therefore a judgment was entered as a matter of course so that a writ of mandamus could thereafter be issued. The judgments invariably provided that they would be enforceable only according to the laws of the state of Colorado. However, a judgment once having been entered, the holders of the judgment would attempt by various methods to secure collection thereof as though the judgments were unlimited.

Under the new federal rule, writs of mandamus were abolished. Rule 81 (b) providing as follows:

> "SCIRE FACIAS AND MANDAMUS. The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules."

Unquestionably, no further judgments should be entered even in the United States courts pursuant to the new rule.

V.

WRITS OF EXECUTION OR GARNISHMENT DO NOT LIE AGAINST DISTRICT

No execution, levy, or garnishment can be made against an irrigation district or the property thereof. No rule appears to be better established than that there can be no execution issued against an irrigation district or special improvement district. This point has not been specifically ruled on by the Colorado Supreme Court. However, a judgment

[33]North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 Pac. 97 (1915); Tulare Irrigation Dist. v. Collins, 154 Cal. 440, 97 Pac. 1124 (1908); Cocoa Rockledge Drainage Dist. v. Garrett, 140 Fla. 359, 191 So. 687 (1939).

[34]Denver-Greeley Valley Irrigation Dist. v. McNeil, 80 F. (2d) 929 (C. C. A. 10th, 1936), 106 F. (2d) 288 (C. A. A. 10th, 1939).

[35]In Denver-Greeley Valley Irrigation Dist. v. McNeil, 106 F. (2d) 288, 292 (C. C. A. 10th, 1939), the court held: "The remedy of mandamus in the United States courts is ancillary. The writ is issuable only after the right has ripened into judgment." In Rialto Irrigation Dist. v. Stowell, 246 Fed. 294 (C. C. A. 9th, 1917) a judgment on California irrigation district bonds was permitted. This case appears superseded by later California cases.

has been specifically refused. Since judgment cannot be entered, it follows that there can be no proceedings supplementary to or in aid of judgment.

The Colorado Supreme Court, in *Alpha Corporation v. Denver-Greeley Valley Irrigation District*,[36] affirmed the findings of fact, conclusions of law and decree of dissolution of The Denver-Greeley Valley Irrigation District, in which the Weld County district court had held as a conclusion of law that there could be no execution against the irrigation district. No specific reference to that portion of the decree of the district court was made by the Colorado Supreme Court, but the decree was affirmed.

In *State v. Blake*[37] it was held that a judgment creditor could not seize on execution, district property.[38] The rule against execution was followed, even though execution was sought against land not used for irrigation purposes and not strictly a part of the irrigation system.[39] Execution has also been denied in many other states.[40]

The federal courts have applied the same rule.[41] And in *Gue v. Tide Water Canal Company*,[42] Chief Justice Taney of the United States Supreme Court sustained an injunction against a sheriff to restrain the sale of property of the Tide Water Canal Company, which operated a toll canal.[43]

The denial of a writ of execution appears to rest upon two grounds, first that an execution cannot be used to hamper the affairs of a public

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[36]132 P. (2d) 448 (Colo. 1942).

[37]88 Utah 584, 20 P. (2d) 871 (1933).

[38]The Blake case was followed in Utah Oil Refining Co. v. Millard County Drainage Dist., 90 Utah 67, 50 Pac. (2d) 774 (1935); and Upper Blue Bench Irrigation Dist. v. Continental National Bank and Trust Co., *supra* note 13.

[39]Upper Blue Bench Irrigation Dist. v. Continental National Bank and Trust Co., *supra* note 13.

[40]*Calif.*: Tulare Irrigation Dist. v. Collins, *supra* note 33; San Francisco Savings Union v. Reclamation Dist., 144 Cal. 639, 79 Pac. 374 (1904); El Camino Irrigation Dist. v. El Camino Land Corp., *supra* note 13. *Idaho:* Sudler, Wegener and Co. v. Hillsdale Irrigation Dist., 123 Pac. (2d) 420 (1942). Because of similarity, drainage cases are also in point. See Farrow v. Eldred Drainage and Levee Dist., *supra* note 30; Snower v. Hope Drainage Dist., *supra* note 30. In Eldredge v. Mill Ditch Co., 90 Ore. 590, 177 Pac. 939 (1919), execution against a public water company was denied. No execution is permitted against school districts. See Brooks v. One Motor Bus, 190 S. C. 379, 3 S. E. (2d) 42 (1939); Waterman-Waterbury Co. v. School District No. 4, 183 Mich. 168; 150 N. W. 104 (1914). Garnishment was permitted by statute in State Bank of Florence v. School District, 289 N. W. 612 (Wis. 1940). In Eastern Union Co. v. Moffat Tunnel Improvement Dist., 6 W. W. Howe 488, 178 Atl. 864 (Del. Super. 1935), garnishment of district funds was refused.

[41]Snower v. Hope Drainage Dist., 2 F. Supp. 931 (W. D. Mo. 1933).

[42]24 How. 257, 16 L. ed. 635 (1861).

[43]In Denver-Greeley Valley Irrigation Dist. v. McNeil, 106 Fed. (2d) 288 (C. C. A. 10th, 1939), and Denver-Greeley Valley Water Users Assn. v. McNeil, 131 F. (2d) 67, 72 (C. C. A. 10th, 1939), the court held that the usual process was not available. Mandamus is available where no other remedy is available, People *ex rel.* Griffith v. Bundy, 107 Colo. 102, 111, 109 Pac. (2d) 261 (1941).

corporation; secondly, that mandamus is in reality a substitute for the writ of execution.[44]

In *Sudler, Wegener & Co. v. Hillsdale Irrigation District*,[45] the district court ordered an execution against the irrigation district. The Supreme Court in reversing the decision held:

> "In an action of this nature, the property of public corporations and quasi-public corporations is not subject to execution. This exemption rests on considerations of public policy. Appellant Hillsdale Irrigation District being a quasi-public corporation, the judgment of the trial court, insofar as it orders that the plaintiff have execution against the district, must be reversed."

VI.

NO MECHANIC'S LIEN CAN BE PLACED AGAINST PROPERTY OF DISTRICT

No mechanic's lien can be placed upon the property of an irrigation district. In *Fisher v. Pioneer Construction Company*,[46] it was stated:

> "That the property of a public corporation acquired and used for public purposes, is not subject to a mechanic's lien, we take it cannot be seriously questioned.—25 Cyc. 25; *Florman v. School District*, 6 Colo. App. 319, 40 Pac. 469; *Thomas v. Urbana School Dist.*, 71 Ill. 283; *San Francisco Sav. Union v. Reclamation Dist., supra; Whiteside v. School Dist.*, 20 Mont. 44, 49 Pac. 445; *Portland L. & M. Co. v. School Dist.*, 13 Ore. 283, 10 Pac. 350; *Natl. Fire P. Co. v. Huntington*, 81 Conn. 632, 71 Atl. 911, 20 L. R. A. (N. S.) 261; *Hovey v. East Providence*, 17 R. I. 80, 20 Atl. 205, 9 L. R. A. 156; *Guest v. Lower Merion Water Co.*, 142 Pa. 610, 21 Atl. 1001, 12 L. R. A. 324."[47]

VII.

THE RIGHT TO APPOINTMENT OF RECEIVER

It has been held that no receiver will be appointed for an irrigation or public improvement district. Apparently the only case in which the appointment of a receiver, court commissioner, or special master was indicated is *Beck v. Otero Irrigation District*.[48] Two decisions in the *Beck* case were reported, but both were memorandum decisions only.

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[44]City of Harper v. Daniels, 211 Fed. 57, 63 (C. C. A. 8th, 1914).
[45]123 P. (2d) 420, 422 (Idaho, 1942).
[46]62 Colo. 538, 544, 163 Pac. 851 (1917).
[47]See also Note (1923) 26 A. L. R. 326.
[48]38 F. (2d) 275 (D. Colo. 1929); 50 F. (2d) 951 (D. Colo. 1931).

Neither were final adjudications of the rights of the parties. In the second reported decision in the case,[49] Judge Kennedy stated that a receiver would be appointed unless arrangements were made for the payment of district creditors. No receiver was actually appointed. However, a special master was appointed to take testimony and make recommendations to the court as to what disposition should be made. No report was ever made by the special master, and a composition with creditors was reached under the Municipal Bankruptcy Act.

As against the dictum of the *Beck* case, we have the considered judgments of other courts, both state and federal, that a receiver will not be appointed except in those cases where the state law specifically provides for such an appointment.[50] One of the leading cases on the subject is *Yost v. Dallas County*.[51] In that case a writ of mandamus had been issued for a levy to pay bonds issued by a county in Missouri under a Missouri law providing for the issuance of railroad bonds. The orders were evaded and the plaintiff sought the appointment of a commissioner to levy, collect and pay over taxes into court for the account of the district creditors. The Supreme Court of the United States held that the state law and not the United States Constitution determined the obligation of the contract as evidence of which the bonds were issued, that the taxing power could be exercised only as provided by state law, and that no court commissioner could be appointed. In *Meriwether v. Garrett*,[52] an attempt was made to have the court authorize taxes for the payment of creditors of a dissolved municipal corporation. The court held that there was no machinery provided for the levying and collecting of taxes which it could set in motion. In the case of *Cocoa Rockledge Drainage District v. Garrett*,[53] the creditors petitioned for the appointment of a receiver to collect, levy, and pay over taxes because the Board of County Supervisors had failed to act. Mandamus had previously been issued by the state court. The state law provided for the appointment of a receiver upon default in payment of bonds. However, the instant claim was based upon attorney's fees and a judgment had been entered pursuant to a denial of the claim by the district. The court held that the remedy provided by law for the appointment of a receiver for default in payment of bonds could not be extended to apply to a judgment. The court refused the appointment of the receiver upon the authority of *Yost v. Dallas*[54] and other cases. In *Street Grading District No. 60 v. Haga-*

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[49] 50 F. (2d) 951 (D. Colo. 1931).

[50] See *Methods of Enforcing Satisfaction of Obligations of Public Corporations*, 33 COL. L. REV. 28; Note (1938) 113 A. L. R. 755; JONES, BONDS AND BONDHOLDERS §489.

[51] 236 U. S. 50, 35 S. Ct. 235, 59 L. ed. 460 (1915).

[52] 102 U. S. 472, 26 L. ed. 197 (1880).

[53] 140 Fla. 359, 191 So. 689 (1939).

[54] *Supra* note 51.

dorn,[55] *supra,* a petition for the appointment of a receiver was denied. There the court stated that the remedy sought was not available because the law provides the means for the raising of money by taxes and

> "This mode of collecting taxes for the payment of complainants' bonds constituted a part of the contract under and subject to which they were purchased. The enforcement of this provision, namely, enforcement of collection in the mode and through the officers named in the law, is all complainants are entitled to under their contract, and, accordingly, is the only remedy known to the law in case of nonpayment of the bonds."

In *State ex rel. Lynch v. District Court,*[56] cases on the point that no receiver will be appointed unless the statute specifically so provides are reviewed and analyzed.[57] In *Johnson v. Riverland Levee District,*[58] the bondholders sought a judgment and accounting, the establishment of a lien, and a special judgment against the lands in the district, a mandatory injunction for the making of levies, the appointment of a receiver, the setting aside of fraudulent conveyances, the return of bonds, the dissolution of a holding company, and a restoration of district assest. The court dismissed the petition. The law under which the bonds were issued[59] provided mandamus for a breach of duty. This was only a statutory statement of the rule that existed prior to the passage of the act. The court stated:

> "That the Federal court has no power to collect taxes has been so frequently decided that it is no longer debatable. The remedy provided by statute for the payment of bonds issued under authority of a law of a state is exclusive. *Scott v. Neely,* 140 U. S. 106, 11 S. Ct. 712, 35 L. ed. 358; *Heine v. Board of Levee Commissioners,* 19 Wall. 655, 86 U. S. 655, 22 L. ed. 223; *Yost v. Dallas County, supra; Rees v. Watertown,* 19 Wall. 107, 86 U. S. 107, 22 L. ed. 72; *Thompson v. Allen County,* 115 U. S. 550, 6 S. Ct. 140, 29 L. ed. 472; *Louisville Trust Co. v. Muhlenberg Co.,* 23 S. W. 674, 15 Ky. Law Rep. 397; *City of Clinton to use of Thorton v. Henry County,* 115 Mo. 557, 569, 22 S. W. 494, 37 Am. St. Rep. 415; *McGinis v. Missouri Car and Foundry Co.,* 174

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[55]186 Fed. 451, 456 (C. C. A. 8th, 1911).

[56]41 N. M. 658, 73 P. (2d) 333, 113 A. L. R. 746 (1937).

[57]See also Marra v. San Jacinto Irrigation Dist., 131 Fed. 780 (S. D. Cal. 1904); Depew v. Venice Drainage Dist., 158 La. 1099, 105 So. 78 (1925); Preston v. Sturgis Milling Co., 183 Fed. 1, 32 L. R. A. (N. S.) 1020 (C. C. A. 6th, 1910); Barkley v. Levee Com., 93 U. S. 258, 23 L. ed. 893 (1876); O'Brien v. Wheelock, 78 Fed. 673 (S. D. Ill. 1897).

[58]117 F. (2d) 711 (C. C. A. 8th, 1941).

[59]MO. REV. STAT. (1929) §§10902-10957; MO. STAT. ANN. §§10902-10957, pp. 3592-3633.

Mo. 225, 232, 73 S. W. 586, 97 Am. St. Rep. 553; *Bushnell v. Mississippi and Fox River Drainage Dist.*, 233 Mo. App. 921, 111 S. W. (2d) 946, 952; *Kansas City v. Field*, 285 Mo. 253, 226 S. W. 27."[60]

VIII.

RIGHT TO EQUITABLE RELIEF

There have been various attempts to secure equitable relief for irrigation district creditors. Districts frequently acquire land for non-payment of irrigation district taxes. In *Clough v. Compton-Delevan Irrigation District*[61] district creditors sought partition of district acquired lands. The court held:

> "There is, first, no lien nor resulting trust arising from the purchase of the bonds. The statute fully defines the relationship of bondholders, district and landowners. Nowhere does it declare that the bondholder has a lien on the land itself, and it certainly does not recognize any trust for his sole benefit. Section 29 provides that the title to land acquired by the district shall vest in the district, 'and shall be held by such district, in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this act.' "[62]

No partition was decreed.

Courts of equity may intervene to preserve the proceeds of levy for the persons entitled thereto.

An example of the intervention by court of equity to prevent dissipation of funds of an irrigation district provided for payment of bonds and coupons is that of *Provident Land Corporation v. Zumwalt*.[63] In that case The Provident Irrigation District purchased future due bonds of the district with money coming into its hands from the rental of land acquired for non-payment of taxes. The court ordered the funds returned and distributed to all past due bond holders. However, the court permitted deductions from the fund for proper district expenses, and presumably for acquisition of tax title and of maintenance and operation during the period that the land was owned and leased by the district to tenants. The court held:

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[60]Cases holding that the federal courts will not levy and collect taxes of public corporations include Rorick v. U. S. Sugar Corp., 120 F. (2d) 418 (C. C. A. 5th, 1941). It is to be noted that this case also holds that though the Florida drainage act gave the right of foreclosure for failure to pay taxes, the court held such right could not be enforced by a suit in equity for foreclosure by a bondholder but mandamus against the public officer must be instituted.

[61]12 Cal. (2d) 385. 85 P. (2d) 126 (1938).

[62]85 P. (2d) at 128.

[63]12 Cal. (2d) 389. 85 P. (2d) 116 (1938).

"We assume, for the purposes of this case, that the directors, in their discretion, may determine that some of the proceeds of leasing of lands are essential to operation and maintenance, and may use them for these purposes. But any surplus, over and above operating expenses, remains subject to the trust, and should go to payment of bondholders."[64]

While the California courts regard irrigation district bonds as general obligations and while in this case the court states specifically that the land cannot be released from the lien of the bond until payment in full has been made, nevertheless, the same protection should be given and accorded to bondholders and other irrigation creditors in those states in which irrigation district bonds are held to be special obligation bonds and not general obligation bonds.

In *Cooper v. Gibson*[65] it was held that a court may compel the distribution of funds in the hands of a drainage district treasurer to those persons who are properly entitled to them.

The rule of *Provident Land Corporation v. Zumwalt*[66] cannot be extended to hold that an irrigation district may not dispose of property held by it. In *Johnson v. Warm Springs Irrigation District*[67] the district brought a statutory proceeding to sell water which it contended was surplus water. After sale bondholders appeared and attempted to enjoin the completion of the sale. The statute authorizing the sale was passed after the issuance of the bonds. However, the court sustained the sale of the water and held that the act did not violate or impair any rights of contract. This case demonstrates that an irrigation district creditor does not have a special lien upon all district property even in a state in which the theory of general obligation bonds is followed.

IX.

REMEDY OF BONDHOLDERS PROTECTIVE COMMITTEE

Under the decision in *Interstate Trust Company v. Montezuma Valley Irrigation District*,[68] any irrigation district bondholder or coupon holder may appear at tax sale and offer his bonds and coupons in purchase of tax sale certificates upon district land being sold for nonpayment of taxes levied for payment of bonds or coupons. In Colorado, even after sale, by tendering the coupons and bonds as so much cash, an

[64] 85 P. (2d) at 121.
[65] 133 Cal. App. 532, 24 P. (2d) 952 (1933).
[66] *Supra* note 63.
[67] 118 Ore. 239, 246 Pac. 527 (1926).
[68] 66 Colo. 219, 181 Pac. 123 (1919).

irrigation district coupon holder or bondholder may acquire a tax sale certificate and convert his bond into a lien upon a particular piece of property. It appears to be true that the same procedure could be used in other states. As a practical matter, this method of handling tax certificates has not been followed to any great extent.

The original irrigation district act of Colorado provided that bonds and coupons could be used as cash in payment of district taxes levied for the payment of those bonds or coupons.[69] The theory for including this provision in the act was to provide a ready market for coupons and bonds of the district. However, since most of the irrigation district promotions were overly optimistic and a very large portion of land immediately failed to pay taxes, this market for bonds was practically nonexistent. Competition for farmer buyers of defaulted bonds drove down the price for bonds. In most cases in Colorado irrigation district creditors organized bondholders protective committees and made a blanket sale of bonds and coupons to farmers in irrigation districts at a substantial discount.

To some extent the organization of these bondholders protective committees served to solve the problem of the individual bondholder being unable to use his bond and coupons. The committee is in better position to sell to individual land owners in the district or to acquire tax certificates and consequently tax deeds. It can retain services of counsel and prevent natural competition of bondholders for a market.

X.

REMEDY BY WAY OF TAX SALE

The method provided for taxation by the district under the irrigation district statutes of western states uniformly provides for the sale of land for nonpayment of irrigation district taxes. This sale is generally conducted by the county treasurer in substantially the same manner as a sale for general taxes. The statutes of Colorado and other states provide that the land shall be stricken off to the district if there are no other bidders. Hence, the district acquires a good many tax sale certificates for both maintenance and operation, and bond and bond interest taxes. The law in Colorado provides that the district may acquire title to land by a tax deed.

[69]Colo. Laws 1901, ch. 87, §19; Colo. Laws 1905, ch. 113, §20; COLO. STAT. ANN. (1935), ch. 90, §398. The Irrigation District Act of 1921 contains the same provision, COLO. STAT. ANN. (1935), ch. 90, §459. The Public Irrigation District Act of 1935 does not provide for payment of taxes to the County Treasurer nor does it provide for use of bonds and coupons.

In *Noble v. Provident Irrigation District*[70] bondholders of the district filed a petition for a writ of mandamus to compel the irrigation district to acquire tax deeds upon the lands in the district. The petition was denied because of insufficient allegations of fact. The case was remanded to the trial court. Inquiry of counsel for the district reveals that no further action was taken by filing an amended petition or by proceedings in any additional case for that purpose.

XI.

SUMMARY

In summarizing the rights and remedies of bondholders of irrigation districts we find:

1. No judgment may be entered against an irrigation district except upon unliquidated claims.

2. No execution, garnishment or supplementary process may be issued against an irrigation district.

3. There can be no mechanic's lien upon irrigation district property.

4. Courts have not appointed receivers for irrigation districts.

5. Irrigation district creditors are entitled to the protection of a court of equity to prevent dissipation by the district or its officers of any of the assets of the district properly within the fund provided by law for the payment of district obligations.

6. A writ of mandamus will lie against any district official or any county official who fails to perform his duty in making a proper levy upon lands legally within the district and enforcing the collection thereof by tax sales.

7. Partition of district lands will not be decreed.

8. No district has been forced to acquire lands by tax deed.

9. A ratable distribution of the fund set aside for district creditors will be ordered.

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[70] 10 Cal. App. (2d) 384, 51 P. (2d) 896 (1935).