

**Taxes—Assessment—Board of County Commissioners, Powers of
With Reference to Assessments—Board of Equalization.**

Where an action has been prosecuted in the district court contesting an assessment the judgment rendered therein is *res adjudicata* as to all questions involved and such property cannot be re-assessed.

Helena, Montana, August 10, 1905.

Hon. William D. Clark, Chairman, Board of County Commissioners, Butte,
Montana.

Dear Sir:—I beg to acknowledge receipt of your letter of August 5, in which you make inquiry as to the power of the county board of equalization to make certain assessments against the Montana Ore Purchasing Company.

I understand the statement of facts in this case to be substantially as follows: In 1903 the Montana Ore Purchasing Company made return to the assessor of the proceeds of certain mines, and that an assessment of \$601,250.28 was made against said company; that subsequently the board of equalization raised this assessment to \$843,346; that no notice was given to the company of this raise until after the same was made; that thereafter the company tendered its taxes on the former assessment but the same were refused by the county treasurer and taxes demanded on the full sum of \$843,346. Subsequently the company contested the legality of this increased assessment, and at the trial of the action judgment was entered in favor of the company and against the county. On appeal to the supreme court this judgment was affirmed, with the modification that the taxes due upon the assessment admitted to be correct should be paid before an injunction could issue properly to restrain the collection of the taxes on the increased assessment.

The question now presented is whether the board of equalization has the authority to add this increased assessment for the year 1903, amounting to the sum of \$242,096, to the assessment of said company for the year 1905.

This question must be answered in the affirmative, unless such former proceeding is *res adjudicata*. In the complaint filed in this action (Montana Ore Purchasing Company v. Maher, County Treasurer) two issues were raised:

1. Was the sum of \$601,250.23 the net proceeds of the mines in question for the year 1903?

2. Did the board of equalization have the authority to raise this assessment without giving notice to the company?

The district court decided in favor of the plaintiff, and the presumption is that all issues presented were passed upon. It is true that the express findings of fact made by the court do not of themselves expressly state that the issue as to the value of the net proceeds of the mines was passed upon, but in the judgment rendered by the district court it was ordered, adjudged and decreed:

"That \$601,250 was the legal assessment on the net proceeds of the mines of plaintiff, and the taxes thereon the sum of \$9,980.75, and the said sum is adjudged to be the legal and collectible taxes due and owing by plaintiff on the net proceeds of its mines for the year 1903."

Under the doctrine of implied findings, which obtains in this State, no express findings are necessary to support a judgment unless the adverse party requests that findings be made. (Secs. 1114 and 1115, C. C. P.)

In *Yellowstone National Bank v. Gagnon*, 25 Mont. 268, the court said:

"In this state the system of implied findings prevails (*Gallagher v. Cornelius*, 23 Mont. 27, 57 Pac. 447; *Haggin v. Saile*, 23 Mont. 375 59 Pac. 154), and, in the absence of a compliance with the requirements of the sections quoted, the presumption obtains that the court impliedly found for the prevailing party upon the issues of fact not covered by the express findings. Unless the party seeking a reversal has followed the course prescribed by Sections 1114 and 1115, the express findings are supplemented by implied findings. So considered, the findings in this case are responsive to the issues, and support the judgment."

This same doctrine is affirmed in *Boe v. Hawes*, 28 Mont. 201.

On appeal to the supreme court this judgment rendered by the district court in *Montana Ore Purchasing Company v. Maher* was affirmed, with the modification above indicated. (81 Pac. 13). The district court having directly decreed that \$601,250 was the value of the net proceeds of these mines for the year 1903, and this judgment being supported by implied findings, under the authority of the decisions above referred to, it is very apparent that the question cannot now be raised, and that it has been finally determined and settled by a court of competent jurisdiction that the value of the net proceeds of the mines in question for the year 1903 was the sum of \$601,250 and not the sum of \$843,346, and this decision on this point, having never been reversed or modified, is *res adjudicata*, and the conclusions reached by the county attorney of Silver Bow County in his letter of August 2, 1905, are correct.

OPINIONS OF THE ATTORNEY GENERAL.

Copies of the opinions of the county attorney are herewith returned.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.