JUDGE PHILIPS ANSWERED.

EXCEPTIONS TO HIS SPECIAL TAX OPINION BY JUDGE McDOUGAL.

The City Counselor Defines Some of the Rulings Quoted by the United States Judge — Thinks a Test Case Should Be Made at Once.

City Counselor McDougal made it very apparent yesterday that he did not agree with Judge Philips in the latter's opinion upon the invalidity of special tax bills for street sprinkling. The city counselor seems to think that the judge has not studied the question under consideration with his usual care. Judge McDougal thinks that inasmuch as a jurist as eminent as Judge Philips looks for his law books and they other lawyers are of the same calibre, a test case should be brought before the supreme court immediately.

"I have just completed the examination of Judge Philips' opinion and find some lessons upon the validity of special tax bills for street sprinkling," said the judge, "and while Judge Philips is clear and forceful, as he always is, yet I cannot believe that he studied the answers presented with his usual care.

"The case of Chicago vs. Blair (99 Ill. 304), where he quotes and follows, plainly says that there 'no express power is granted to make special assessments for the work proposed, nor for that reason the tax bills were legal.' Here, however, the Kansas City charter contains ample power and then follows the very decision in line to that.

"In the case of State ex rel. vs. Mintzer (5 Minn.) where the power was not full and complete as it is here, the supreme court of Minnesota upheld a special assessment for sprinkling. This is a leading case and is referred to in the Illinois case and also in the Illinois case of the Kansas City case upon the question of the permanency of the improvement is clear and convincing.

"So in the case of Hooker vs. Cincinnati (36 Ohio 348) the charter of Cincinnati authorized the levying of assessments for sprinkling and sweeping streets and the law was there held good and a lien force closed for executed the street in front of the property in question. Surely upon the ground that the benefit accruing to the property, in the increased value of the property, either temporary or permanent, over and above the cost of the improvement, is the ultimate and full value of the property, is a reasonable one and all.

"These are the only cases I have found that are directly in point and as the only law decisions I have found that are in point upon the question under consideration with his usual care. Judge McDougal thinks that inasmuch as a jurist as eminent as Judge Philips looks for his law books and they other lawyers are of the same calibre, a test case should be brought before the supreme court immediately.

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