

duction to the crematory cannot be regarded as in the nature of a tax or assessment, or as a charge which the board of supervisors has no right to impose. This question was before the court in the case of *Walker v. Jameson*, 140 Ind. 591, 37 N. E. 402, and 39 N. E. 869. An ordinance was there under consideration providing that garbage should be collected only by the city's licensed agent, and that the parties producing garbage should place it in boxes for removal provided by such agent at their expense, and a contract empowering the contractor to collect such garbage and to charge a specified price per pound for its removal. It was contended that the provision for payment by the householder for the removal of the garbage was an assessment against him or his property, and, as the charter did not confer the power to make an assessment of this kind, it could not be made. The court said:

"Whatever else it may be, it is certainly not an assessment. It has not a single element of an assessment, for the reasons—First, that, except by the voluntary act of the householder, nothing is to be paid at all; second, no definite amount, in any event, is to be paid; third, nothing is made a charge upon the property. The whole arrangement is simply a provision by the ordinance—First, that garbage shall be collected and carted through the streets only by the licensed agent of the city; second, that parties producing the garbage needing to be thus carted away shall place the same in proper vessels, convenient for the removal by such agent; and, third, that such agent shall charge not exceeding the price named for removing the same. It is no more an assessment than is the provision of the ordinance fixing the rate of payment for gas or water, or street-car fare."

The law as established by the *Slaughter-House Cases*, 16 Wall. 36, is clearly decisive as to the question of the right of a municipality to impose a reasonable charge for the removal of a nuisance, and it is not claimed in the present case that the charge imposed by the ordinance is excessive. The court in that case said:

"Unless, therefore, it can be maintained that the exclusive privilege granted by this charter to the corporation is beyond the power of the legislature of Louisiana, there can be no just exception to the validity of the statute. And in this respect we are unable to see that these privileges are especially odious or objectionable. The duty imposed as a consideration for the privilege is well defined, and its enforcement well guarded. The prices or charges to be made by the company are limited by the statute, and we are not advised that they are, on the whole, exorbitant or unjust."

Respondents maintain that their acts do not injure the complainant; but, if complainant is entitled to the whole of the garbage created in the city and county of San Francisco,—and such is its claim,—it is obvious that the continual shipment of it must necessarily be injurious to its interests, and to a degree which would render an injunction pendente lite appropriate, under the circumstances. Let a preliminary injunction issue in accordance with the prayer of the bill of complaint.

## HASELTON v. FLORENTINE MARBLE CO.

(Circuit Court, D. Vermont. May 12, 1899.)

## 1. MORTGAGES—RIGHT TO FORECLOSE—AGREEMENT FOR EXTENSION.

An agreement between mortgagor and mortgagee, after condition broken, that the time for making payment might be deferred, but not for any definite time, will not defeat the right of entry given by the terms of the mortgage, nor bar proceedings for foreclosure.

## 2. ATTORNEY AND CLIENT—POWERS OF ATTORNEY.

The relation of attorney and client alone will not confer on the attorney authority to bind his client by an agreement to extend the time for payment of a mortgage debt owned by the client.

In Equity. On motion for the appointment of a receiver.

Chas. M. Wilds, for plaintiff.

Frederick H. Button and Eleazer L. Waterman, for defendant.

WHEELER, District Judge. This bill is brought for foreclosure of a mortgage on, and sale of, marble lands and quarries, "and all and every and each of the engines, boilers, derricks, channeling machines, ropes, pulleys, gang saws, mills, houses, machinery, and appliances, and all the railroad tracks, switches, sidings, leases, and all and singular the real and personal property of the said Florentine Marble Company, in the state of Vermont, which it now owns, or which it may hereafter own, in connection with the operation of its business in said state of Vermont," to secure six notes of the defendant, dated September 1, 1897, by whomsoever held,—one of \$3,659.86 and one of \$6,340.14, due in one year from date, and four of \$10,000 each, due, respectively, in two, three, four, and five years from date, with interest semiannually. The condition of the mortgage is:

"Now, if default be made in the payment of said six promissory notes, or any part thereof, the interest thereon, or any part thereof, at the time and in the manner above specified for the payment thereof, or in case of waste, or non-payment of taxes or assessments upon said premises, or a breach of any of the covenants or agreements herein contained, then in such case the whole of said principal sum and interest secured by the said six promissory notes shall thereupon, at the option of the legal holders of any of said notes, become immediately due and payable; and on the application of the legal holder of said promissory notes, or either of them, it shall be lawful for the said grantee, or his successor in trust, to enter into and upon and take possession of the premises hereby granted, or any part thereof, and to collect and receive all rents, issues, and profits thereof, and operate said quarries and business in his own name, as such trustee, and in his own name or otherwise to file a bill or bills, in any court having jurisdiction thereof, against the party of the first part, its successors or assigns, and obtain a decree for the appointment of a receiver, and for the sale and conveyance of the whole or any part of said premises for the purposes herein specified, by said party of the second part, as such trustee or as special commissioner, or otherwise, under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, all costs of advertising, sale, and conveyance, including the reasonable fees and commissions of said party of the second part, or person who may be appointed to execute this trust, and reasonable attorney's and solicitor's fees, to be fixed by the court, and also all other expenses of this trust, including all moneys advanced for abstracts of title, for insurance, taxes, and other liens or assessments, with interest thereon at six per cent. per annum; then to pay the principal of said first maturing notes due one year from the date thereof, and the balance upon the