

taken as conclusively established, so long as the judgment in the first suit remains unmodified.’”

As hereinabove indicated, however, the questions of fact, which it was necessary to adjudicate in order to establish the validity of the election, were not “distinctly put in issue and directly determined by a court of competent jurisdiction.”

This judgment may very properly be said, therefore, to constitute no bar to another taxpayer’s suit predicated upon lack of notice as to the levy necessary to pay the bonds. In the case of *Hughes v. U. S.*, 4 Wall. 232, 18 L. Ed. 303, the second and third paragraphs of the headnotes are as follows:

“In order that a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases, and must be determined on its merits.

If the first suit was dismissed for defect of pleadings, or parties, or a misconception of the form of proceeding, or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit.”

Also pertinent is the case of *Lawrence Mfg. Co. v. Janesville Cotton Mills*, 138 U. S. 552, 34 L. Ed. 1005, in which case the court held as disclosed by the first and second branches of the headnotes:

“1. Where a party comes into a court of equity to obtain its aid in executing a former decree of the court, the court may open up such decree in order to inquire whether circumstances justified the relief granted by it; in such case it devolves upon such party to show that the decree was a right decree.

2. Where a party returns to a court of chancery to have the benefit of its former decree and the prior decree was the consequence of the consent of the parties, and not of the judgment of the court, the court may decline to treat it as *res adjudicata*.”

In view of the foregoing, it is my opinion that the action seeking to adjudicate the question of the validity of the election under consideration may not bar a further action by any other taxpayer predicated upon the grounds that there was no notice given other than the published statutory notice. It may well be contended that this question has not been in issue and determined by the court. I therefore advise you not to purchase these notes.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3731.

APPROVAL, BONDS OF MONROE COUNTY, OHIO—\$28,090.00.

COLUMBUS, OHIO, November 5, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.