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COUNCIL PROCEEDINGS.

An adjourned meeting of the Town Council was held at Town Hall on Monday evening. The President and all the members were present, and there was a large attendance of citizens who were attracted by the fact that several interesting questions were before the Council, among them being the leasing of Oak Grove, the D. L. & W. switch across the canal and Catharine street to Ninth, and the Electric railway.

Geo. S. Robbins presented the following petition signed by 280 citizens:

The undersigned citizens and tax payers of said town do hereby respectfully request your honorable body to continue the lease between the town and the Bloomsburg Land Improvement Company for Oak Grove Park in conformity with the original agreement, for the reason that we believe the said agreement to have been a good and judicious one, the consideration reasonable, and the park desirable and beneficial.

We would further request your honorable body to make reasonable provision for its improvement and maintenance from time to time.

The solicitor submitted his report as to the costs of the view on Jefferson and North Streets. On motion Secretary directed to issue orders for same amounting to $65.75 for the former and $47.25 for the latter.

The Electric Street Railway ordinance was then read granting the Company the right to operate its line over different streets and roads within the town limits. Said road is to extend from Rupert to Espy and to the Shaffer Bridge.

After some discussion President Drinker read the following speech:

GENTLEMEN OF THE TOWN COUNCIL:—You are considering the passage of an ordinance granting right of way, etc., to an Electric Railway Company; a thing of vast importance—and a note of warning seems necessary at this point. The gentlemen who are asking this right of way, ask it through nearly all your best streets. Does it occur to you that in granting *so* much you shut out competition and that consequently you place the town at the mercy of *one* company in the matter of *fares*, etc.? Three or four streets will suffice for this Company for the present, more can be granted to it or to others later on. You must consider that the grant of right of way actually gives these gentlemen so much of your valuable land as they may require for their railway *forever* and for *nothing*. Such railway will be of great advantage to the town, but will benefit perhaps *as much* the owners of the railway. We should see that they be fairly treated and encouraged but it is our sworn duty also to look to the interests of our town. Railroad companies whose motive power is steam have great expense in right of way, grading, etc., which other railways have not. Most cities and boroughs have made these electric companies pay direct sums for the right of way, bound them to *pave* and keep in order streets over which their rails are laid, pay yearly license for each car used, &c. In Williamsport I think $50 per year for each car. Should not we also stipulate for like advantages? Should we not have a voice in the matter of placing switches, sidings, etc., that may hereafter be placed as "traffic may require?" Should not we see that the rail be used only where streets be properly and entirely paved with brick or other *solid* paving? They cannot be used on ordinary streets or roads in the town. It is best to go slow sometimes. Let us fully consider these railway franchises before granting them. Let a proper committee be appointed to go to towns in which these wonderful roads are in use. Let such committee ascertain what rights other towns regret having granted, what restrictions they have made, what returns they have received or expect to receive in the way of *cash* for right of way, license for cars, paving streets, etc. Then after such committee reports to your honorable body it can intelligently consider how *much* better Bloomsburg may do, for in such matters those who do just generally do or should do best."

Sterling moved that a committee be appointed to ascertain what is done in other towns where a franchise is given the street railway, in regard to licensing cars, said committee to report next Monday night. Seconded by Knorr and carried—all voting yea except Creasy.

The D. L. & W. switch ordinance was next considered. The switch to extend across Catharine street and down Ninth to Market.

Creasy and Wilson moved that the location of the road on Ninth street to Market be subject to the decision of the Committee on Highways. Carried.

Moved by Creasy and seconded by Yost that the switch ordinance be adopted. Carried.

The Oak Grove matter was then taken up and the Town Solicitor read the following opinion.

TO THE PRESIDENT AND MEMBERS OF THE TOWN COUNCIL OF THE TOWN OF BLOOMSBURG:

Gentlemen:—By resolution of your body there has been referred to me as Solicitor the following questions, to wit:

1st. Can the Town Council legally lease or purchase Oak Grove Park from the Land Improvement Company?

2nd. Is the town of Bloomsburg liable for the rent of said Park for the years 1892 and 1893, under the lease heretofore made with the said Land Company.

In expressing our opinion upon these questions we shall endeavor to confine ourselves strictly to a discussion of the rights, powers and liabilities of the town under the laws of corporation. With such questions as that of the suitable location of Oak Grove Park, the advisability of its purchase from a financial standpoint, or the benefit and pleasure accruing to the town from its purchase, we have nothing to do. These are matters within the discretion of the Council, and all that we are called upon to decide is whether or not the town authorities can legally expend the money of the citizens in purchasing or leasing such property.

A corporation, municipal as well as private, is an artificial creation. It has no life, no power, no right outside of the charter which gave it birth. This is its organic law. From its charter all its powers are originally derived, and to its charter every attempted exercise of power must be ultimately referred. Any act or attempted exercise of power which transcends the limits expressed or necessarily inferred from the language of the instrument by which its powers are granted, is beyond the authority of a municipal corporation, and is therefore null and void.

This principle has been so repeatedly cited and affirmed by our highest courts and most learned legal writers that it can no longer be a matter of dispute.

Therefore the question as to whether the Town Council can legally lease or purchase real estate for the purpose of a pleasure park must be decided solely and strictly from an inspection of its charter. And in construing this charter we must be governed by the further principle that only such rights can be exercised as *plainly* appear in the charter. Chief Justice Black states this principle forcibly in the case of Com. vs. RR. Co., 27 Pa. St. 350, where he says: "That which a corporation is authorized to do by its act of incorporation it may do; beyond that all its acts are illegal. And the power must be given in *plain* words or by *necessary* implication. All powers not given in this direct and unmistakable manner are withheld. If you assert that a corporation has certain privileges, show us the words of the Legislature conferring them. Failing in this, you must give up your claim. A doubtful charter does not exist, because whatever is doubtful, is decisively certain against the corporation."

Therefore, if the town through its Council has the right to purchase real estate for a public park, that right must appear in the charter, and it must appear by plain words or by necessary implication. Ingenuity, logic or inferential reasoning will not avail us.

Turning, then, to the charter, we find therein nothing relating to the purchase or leasing of real estate by the town, except as contained in division IV of Sec. 1 of the Act of April 3, 1851. (Town Laws, page 12). This provision provides that the town shall have power "to hold, purchase and convey such real and personal estate as *the purposes of the Borough shall require.*"

Under this clause the town may not hold such real estate as might, in the opinion of the Council, be simply convenient, advantageous or agreeable to the citizens. Its real property is confined to such as the Borough purposes require. As we take it, Borough purposes are such as relate strictly to Corporation, municipal purposes or the purpose of the town government. For instance, it has been decided that under this clause a Borough may own gas works to light its streets, water works, town halls, fire-engine houses, engines and other fire apparatus, and the horses with which to pull them, the implements needed for repairing streets, a lock-up, the furniture for a town hall, the books in which the ordinances are recorded, and the like. (See Trickett on Boroughs). It is property of this character which was meant by the words "such as the purposes of the Borough shall require." We do not believe that a pleasure park can be included in this clause of our charter. If purchased at all by the town it would be purchased merely as a convenience, a pleasure or a resort for the citizens, but it could hardly be said to have been required by any borough or municipal purpose, nor could its purchase as a sanitary measure be required in the present state and condition of the town.

It may be urged that this is a too narrow construction of our charter, but, as I have already said, all charters must be construed in the strictest manner. Not the least shadow of liberality is allowed us, and that this is a wise and salutary feature in our jurisprudence is attested by the entire history of municipal government. Remembering the words of Judge Black, that all powers not given in a direct and unmistakable mannerare with held, we are clearly of the opinion that the first question submitted to us must be answered in the negative.

Such a conclusion renders unnecessary any discussion of the inability of the town to make such a lease or purchase on the ground that it would increase our indebtedness beyond the lawful limit.

This brings us to the consideration of the second and more intricate question, viz: the town's liability on the former lease with the Land Improvement Company, dated July 12, 1892, and its renewal, if it was renewed. In the discussion of this question a brief statement of the facts concerning the various leases and their renewals is necessary.

On July 12, 1892, the town of Bloomsburg, by a committee of its Council accepted a lease in writing from the Land Improvement Company, for Oak Grove Park for the term of one year, commencing on the 5th day of June, 1892, for the rental of five hundred dollars with the option of renewal. This lease was made and considered as a renewal of the former lease between the same parties executed in 1891. On May 5th, 1893, a motion was carried in the Council to again lease the Park on the same terms as those of the subsequent year. However, no renewal of the lease was ever actually made pursuant to this motion. There the matter seems to nave been dropped and affairs have remained in this condition ever since. No rent has been paid the Company for the years 1892 and 1893.

Under this state of facts we are of the opinion that there was no lease with the Land Company for 1893, and that even if the town had used the Park for that year, which is disputed, and if the Land Company be entitled to recover at all, it could not claim from the town rent under a lease not in existence, but would only recover for 1893 on a quantum meruit, that is, for what the use of the Park would be reasonably worth.

However, a more important question rises in this connection, viz: Can the Land Improvement Company recover from the town in any event? If our answer to the former question is correct; if the contract or lease entered into by the Town Council on July 12, 1892, was ultra vires, that is, beyond the power of the Council to make, then their contract in said lease, binding the town to the payment of rent was void and of no effect. Let me quote from the work of Judge Dillion on Municipal Corporations, Sec. 933: "Upon a contract which is ultra vires in the true sense of that expression that is, upon a contract relating to matters wholly outside of the chartered powers of the corporation, there is no liability upon the contract, and the corporation is not estopped from setting up the defence." It would be rank injustice to permit the corporate officers to bind their principal, the town, by contracts they ne ver had any power to make.

Again, it is a general and fundamental principle of the law that *all* persons contracting with a municipal corporation must *at their peril inquire into and ascertain the nature and extent of the power* of the corporation or its officers to make the contract; and a contract beyond the scope of the corporate power is void, although it may be under the seal of the corporation. (See Dillion on Mun. Cor. Sec. 447).

In contracting, therefore, with the town the Land Company was bound to know whether the municipal officers had the power to bind their corporation by such a lease. If the Land Company was mistaken in this it was at its own peril and loss. Although the town officials may have taken possession of and permitted the public to use the Park, the Land Improvement Company cannot compel the tax payers to pay rent therefore, if the conduct of those officials in taking possession of this real estate was without authority and the Land Company knew, or was bound to know, that their act was in that respect illegal.

In a word, if, as we have already held, the lease of July 12, 1892, and its attempted renewal of May 4th, 1893, were acts beyond the power of the corporate officers, then their contract is not binding on the town and there can be no recovery by the Land Company on the lease.

Respectfully submitted,
FRED IKELER,
Aug. 16, 1894. Solicitor.

P. S.—We are aware that this opinion will by no means coincide with the wishes of many citizens who firmly believe that the Park would be of great benefit to the town and that the present is the proper time to make the purchase. Indeed, it does not concide with our own views in that respect. But however much we may deplore the inability of the town to make a purchase of what many consider a needed improvement, we must nevertheless be governed by our charter in this as in all other attempted exercises of power. If that charter is insufficient to provide for all the wants of the town, some steps should be taken to procure an increased grant of rights and privileges, but in no case can this Council lawfully violate or disregard the provisions of the charter, however insufficient it may be.

Creasy moved that the Council release Oak Grove. Motion carried by votes of Creasy, Yost, Hicks, and Wilson. Knorr, Sterling and Drinker voted no.

Adjourned to Monday August 27th.

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