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VOL 30

BLOOMSBURG, PA., FRIDAY, JULY 19, 1895.

NO 29

LIVELY COURT NEWS.

Special Licence Case of N. Lieberman.

The Court Hold the Town Ordinance Providing for a Special License of Fifty Dollars for Transient Dealers Invalid.

ELECTION INJUNCTION CASE

F. P. Drinker Files a Bill to Restrain the Town Council From Holding a Special Election to Increase the Indebtedness of the Town, and to Build an Electric Light Plant.

INJUNCTION ISSUED AND NO ELECTION HELD.

Mention was made last week of the arrest of two transient dealers in clothing, for refusal to pay the special license of fifty dollars, and of their being fined and imprisoned by S. C. Creasy, President of the Town Council. A hearing was held before Judge Ikeler on Friday last. R. R. Little Esq., town solicitor, appeared for the town, assisted by Jas. Scarlet Esq., of Danville, Lieberman and Vogel, the defendants, were represented by Ikeler and Ikeler. The case occupied most of the afternoon. The facts as brought out at the hearing were as follows: N. Lieberman came to Bloomsburg on Friday, the 5th, inst., and opened a clothing store in Dr. Evans' building corner of Main and Jefferson streets. He obtained from the county treasurer a retail mercantile license for which he paid seven dollars. He advertised a ten days' sale of clothing damaged by fire, which brought him under the class of transient dealers.

Ordinance No. 46 reads as follows: "All transient stores beginning business, for the sale of any kind of merchandise whether the same shall be represented as bankrupt, assignee, damaged by fire or by any attractive or conspicuous advertisement whatsoever, shall pay a license of fifty dollars per month to be paid monthly in advance, and upon the failure of said persons to secure license, he or they shall be fined in the sum of not less than one hundred dollars to be collected as all other fines are by law collectible, and in default of the payment of said fine or costs, be imprisoned in the jail of the county for a period of not less than thirty days." The ordinance was passed in pursuance of the act of May 4, 1889, which is as follows:

SECTION 1. Be it enacted, etc., That hereafter every person, whether principal or agent, not engaged in a permanent business in any city, borough or township of this Commonwealth, but entering into, beginning or desiring to begin a transient retail business in such city, borough or township, for the sale of any goods, wares or merchandise whatsoever, whether the same shall be represented or held forth to be bankrupt, assignee, or about to quit business, or of goods damaged by fire, water or otherwise, or by any attractive or conspicuous advertisement whatsoever, shall take out a license for the same from the proper authorities of said city, borough or township. The amount of such license in any city or borough shall be fixed by ordinance, duly passed by the council of such city or borough, and the amount of such license in any township shall be fixed by the county treasurer, and to be paid into the school fund of such township, to be used for school purposes, which license shall not be less than twenty-five dollars, nor exceed the sum of one hundred dollars per month; said license to be renewed monthly during the continuance of said sales; and upon failure of said person or persons so to secure license, he or they shall be fined in a sum not less than one hundred dollars, to be collected as all other fines are by law collectible, and in default of payment of said fines and costs, be imprisoned in the jail of said city or county for a period not exceeding thirty days.

SECTION 3. Any person failing to take out a license, or refusing to pay the license tax required by this act, or who shall violate any of the provisions thereof, shall on conviction be fined not less than one hundred dollars, and in default of payment thereof, together with costs, to be imprisoned in the city or county jail not exceeding thirty days.

This act was subsequently amended May 10, 1893, providing for a maximum license fee of \$1000 per month, but retaining the other conditions. In pursuance of the ordinance Mr. Creasy called upon Lieberman, and

demanding the fee of \$50. This was refused, and then Lieberman and Vogel were arrested by Chief of Police Knorr, and taken before President Creasy at the Town Hall. On the witness stand Creasy testified that on refusal to pay, he fined them \$250, and committed both to jail for 60 days, because he understood that both were the owners of the store. It appeared however that Vogel was a clerk, and the case was not pressed against him before the court. There appeared to be some irregularity in the papers made out by the President for their commitment to jail, which was conceded by the counsel for the town. After arguments by Fred Ikeler and James Scarlet, the court rendered the following opinion:

OPINION OF THE COURT. Of course this case must stand upon the evidence here, as produced by the commonwealth. Under and according to the law governing hearings of this kind, the defendants are not permitted to give any evidence. We have heretofore, in Montour County where, in a similar case, the prisoners were petitioners, carefully examined this question—the questions raised in this case. We have examined the acts of assembly relating to them. While we are quite clear that the merchants of the town may be protected by a proper license under a proper law—by a constitutional act of assembly and a town ordinance properly drawn thereunder: while we are satisfied that such an act and such an ordinance pursuant thereto would control the license and warrant its collection; and would be no doubt a wise remedy for the evils existing and contemplated by the present legislation, and would be a wise means of protecting the resident merchants of a town or other municipality: we are yet fully convinced that the act of assembly of 1889 and the ordinance drawn under it are void. If we were passing upon the record as it stands before us, we would have been obliged to discharge the petitioners at their first hearing; but we have permitted the commonwealth to give evidence and to show the facts. When we permit that to be done it is our duty to construe the act of assembly and the ordinance strictly. That is, after allowing the commonwealth to give oral evidence in support of, and in addition to, the warrant of arrest, record of conviction and commitment, it becomes our duty to consider the invalidity of the ordinance and the constitutionality of the statute under which it was framed.

There are some cases, however, which hold that the constitutionality of a law, statute or ordinance can not be tested under a habeas corpus, and when that is the only alleged ground for relief the prisoner would be remanded. But the contrary rule is the soundest in reason and best supported by authority. In this case the commonwealth admits that it has no cause to detain M. Vogel, one of the prisoners, and consents to his immediate discharge. The other prisoner, N. Lieberman, must be released, not only because there is no proper judgment, warrant, commitment, or record of conviction, but because the statute of 1889, under which the town ordinance was drawn, is unconstitutional and the ordinance under which the prisoner is held is found to be invalid. This is strictly in accordance with the able and lucid opinion rendered in April 1895, by Judge Scott in an almost similar case of South Bethlehem vs. Hackett Carhart & Co. reported in the Northampton Reporter, page 381. There being no evidence to warrant the detention of the prisoner we find that he is deprived of his liberty without due process of law, and we accordingly direct him to be released.

Bloomsburg Pa., July 12th, 1895.
By the Court.

THE ELECTION INJUNCTION.

On Friday afternoon a bill in equity was filed in court by F. P. Drinker to restrain the Town Council from holding an election on Tuesday, the 16th, on the question of increasing the town indebtedness and an electric light plant. The plaintiff was represented by C. R. Buckalew, J. G. Freeze and Fred Ikeler Esqs. A preliminary injunction was granted, and a hearing fixed for Monday morning at nine o'clock, at which time the defendants were represented by R. R. Little and James Scarlet Esqs. The defendants in the bill are the President and members of Council, and the election officers of the four election districts. The bill sets forth among other things, the following: THIRD—That the Council of said Town on the 21st day of May, 1895, passed an ordinance entitled, "An ordinance to provide for an increase of indebtedness of the Town of Bloomsburg, in order to fund the

present indebtedness of said municipality as evidenced by outstanding orders, and a judgment of the court in an action for tort, for damages sustained by W. R. Ringrose for personal injuries received, and also purchase real estate and the equipment of a plant to furnish light for the 2nd town, and to pay the expenses incident to the opening of Jefferson street and North street, ordained to be opened by previous councils, and for obtaining consent of the electors of said municipality thereto," a copy of which ordinance is hereto attached marked "Exhibit A," and which the Plaintiff prays may be taken as a part of this bill.

FOURTH—That in pursuance of said ordinance public notice has been given of an election to be held in the several election districts of said Town on Tuesday, July 16th, 1895, at which election the qualified electors of the Town may vote for or against the increase of the bonded indebtedness of said Town, as proposed in said ordinance, a true copy of which notice is hereto attached and marked "Exhibit B," which notice the Plaintiff prays may be taken as a part of this bill; and that the election officers in the several election districts of said Town, above named, intend to hold said election pursuant to said ordinance and notice and make returns of the same, and that the President and members of the Town Council, Defendants above named, intend to prepare and distribute printed tickets for said election, and blanks to the election officers, and otherwise incur expenses for said election, to be paid by the said Town, and they intend also, in case an affirmative vote by a majority of said electors at said election, to carry their aforesaid ordinance into complete execution.

FIFTH—That the ordinance of the Council and the notice to electors above mentioned, combining for a single vote of assent or disapproval by the electors at the election, of a large amount of existing indebtedness of the Town, and a new debt for electric light works to be owned by the Town; together with certain street indebtedness of uncertain amount, in part existing and in part prospective, under pretense of obtaining electoral assent to an increase of debt, is unwarranted in law and is an unreasonable, unfair and misleading exercise of authority by the Council.

SIXTH—That the intended purpose and certain effect of the submission to the electors by the ordinance and notice was to secure for the new increase of debt a large number of votes from persons holding Town orders and other demands against the Town, as well as of the citizens generally interested in reducing rates of interest upon existing indebtedness, and thus prevent a fair election upon the question of increase for an electric light investment by the Town.

Wherefore, because the Plaintiff and other taxpayers of the said Town have no adequate remedy at law, and will be greatly damaged by the execution of said ordinance, prays for equitable relief as follows:

1. That the president and the several members of the Town Council of the Town of Bloomsburg be enjoined from preparing or distributing any tickets to electors or blanks to the election officers of said Town at the proposed election to be held therein on Tuesday next, and from otherwise incurring any expense for said election to be paid by said Town, and also from carrying their said ordinance of May 21st, 1895, into execution.

2. That the several election officers of the Town of Bloomsburg, Defendants in this suit, be enjoined from holding the said proposed election on Tuesday next, or doing any act, matter or thing in relation thereto without the further order of the court.

3. For such other and further relief as to your Honors may seem fit and proper.

Mr. Buckalew made a long and able argument in support of the bill, and was followed by Fred Ikeler, also for the bill. Mr. Scarlet addressed the court on behalf of the town. He contended that the bill was defective in that no sufficient bond accompanied it; the proper parties were not joined in the bill; the bill was not filed in good faith; the court had no jurisdiction over the subject matter, and cited numerous authorities in support of his position. His speech occupied two hours. Col. Freeze closed for the plaintiff, and Judge Ikeler then rendered the following decision:

And now July 15, 1895, after hearing in open Court, the preliminary injunction heretofore granted is continued until final hearing or further order of this Court. There was therefore no election held on Tuesday.

BRIEF MENTION.

About People You Know.

Rev. P. A. Heilman attended Christian Endeavor Convention in Boston.

J. R. Townsend attended United States court at Erie, as a juror this week.

Charles Chalfant Esq., of Danville, was an interested listener in court on Monday.

W. S. Moyer is having a concrete pavement laid at his Market street property.

Mrs. Price of Pottsville, has been visiting her friends here during the past week.

W. S. Moyer's family and J. L. Moyer and family went to the Vance farm, near Orangeville, where they will rusticate for a couple of weeks.

Rev. A. J. McCann was among the priests who participated in the dedication services of the new Roman Catholic church of the Sacred Heart, at Laporte, on the 4th.

Rev. C. H. Brand attended a special meeting of Wyoming Classis of the Reformed Church, at Wilkes-Barre, on Thursday. Rev. A. H. Hantz, of Orangeville, also attended.

Rev. J. R. Dimm D. D. of Selingsgrove presided in the Lutheran Church last Sunday. He was the pastor here many years ago, and was one of the professors in the early days of the Bloomsburg Literary Institute.

Dr. E. Franklin Smith, of New York city, formerly of Goshen, has recently been appointed medical inspector in New York city, at a salary of \$200 per month. In the competitive examinations for appointment on the Board of Health Dr. Smith ranked fifth from the top with a percentage of 93.30. There were 150 competitors at this examination. The appointment will not interfere with the Doctor's private practice.—"Goshen, N. Y. Democrat."

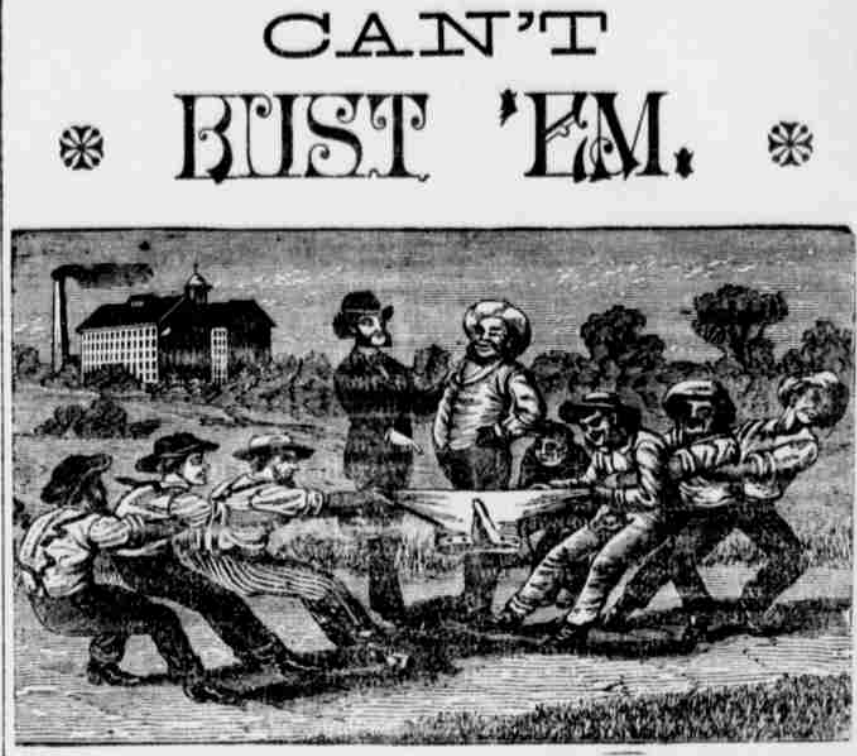
It never pays for people to lose their heads. They are apt to do and say things for which they will be sorry when they have time to calm their passions and take a sober second thought. Talk of hanging a Judge in effigy because he has not decided in accordance with the clamor of an excited public, is the most idle nonsense. It is more, it is a menace to the public peace that ought not to be indulged in, nor encouraged either by individuals or the press.

To come to the point. By his two recent decisions, the transient clothing dealers and the election injunction, Judge Ikeler seems to have given great offense and he has been subjected to severe criticism. We are not the champions of the court, and have no apology or excuse to offer in its behalf. The court probably would not thank us were we to do so, but cool reflection must satisfy every reasonable man that the hasty judgment of the public is more apt to be wrong than the deliberate judgment of the Judge. The Lieberman case was decided on the authority of a decision of Judge Scott of Northampton county in a precisely similar case, and Judge Ikeler says in his opinion printed elsewhere in this paper, that after careful examination he came to the conclusion that Judge Scott was right, and so held.

In the injunction case, the argument was made on Monday occupying most of the day. Voluminous authorities were cited by Mr. Scarlet, which it was utterly impossible for the court to examine in time to render a decision by seven o'clock Tuesday morning, and so he continued the injunction, stopping the election until he has time to consider the questions raised by the bill in equity. If it is found that the bill cannot be sustained, another election may be ordered, the Town being put to the additional expense of re-advertising the ordinance and notices which may or may not be recoverable from the plaintiff in the bill. If the bill is sustained, that is the end of the election in its present form. The proper administration of justice must be governed by the laws as they are. If the time shall ever come when the decisions of the courts are influenced and moulded by public clamor, we shall then have reached a most dangerous period in our national existence.

Frank Emmett, son of A. J. Emmett of Hamlock township, met with a serious injury last Thursday morning, by falling off a hay wagon, while he was unloading hay with a carrier fork. The rope broke, throwing him on the barn floor. Dr. Montgomery of Buck Horn, was called, and found some bones fractured. Mr. Emmett lives on his father's farm in Frosty Valley.

N. U. Funk, Esq., has been appointed by the court of this county, Commissioner to take testimony and find the facts in the Election Contest relating to the election of Director of the Poor of Conyngham Township and the borough of Centralia. The Commissioner is directed to sit for the purpose of taking the testimony at the house of D. F. Curry, in Centralia, within twenty days from July 12th, 1895.



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