

# The Columbian.

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FRIDAY, OCTOBER 11, 1895.

### Candidates.

FOR ASSOCIATE JUDGE,  
**MORDECAI MILLARD,**  
 CENTRE TOWNSHIP.

### STATE TICKET.

STATE TREASURER.  
**B. F. MYERS,**  
 Dauphin County.

### JUDGES OF THE SUPERIOR COURT.

**HARMAN YERKES,**  
 Bucks County.  
**JAMES S. MOOREHEAD,**  
 Westmoreland County.  
**PETER P. SMITH,**  
 Lackawanna County.  
**CHARLES N. NOYES,**  
 Warren County.  
**OLIVER P. BECHTEL,**  
 Schuylkill County.  
**CHRISTOPHER MAGEE,**  
 Allegheny County.

## THE TOWN ELECTION.

### Injunction Case.

#### OPINION OF THE COURT.

##### DEMURRER TO PLAINTIFF'S BILL.

The bill of complaint in this case, filed by a citizen and taxpayer of the Town of Bloomsburg on behalf of himself and others, taxpayers and citizens of said town assails an ordinance of the Town Council passed May 21st, 1895 as unlawful and invalid, and demands that the Council be enjoined from carrying it into execution, and that the election officers of the Town be also enjoined from holding the election provided by said ordinance.

That ordinance provides for increasing the bonded debt of the Town by the amount of \$40,800.00 in addition to the existing bonded debt of the Town, the principal of which is \$37,940.00 and for obtaining the assent of the electors of the town thereto at a public election.

This increase of bonded debt is to be used as follows:

- 1st. To fund a floating debt of the town in the form of town orders to the amount of \$12,500.00.
- 2nd. To pay an existing judgment for tort against the town, with costs and expenses already incurred, amounting to about \$7000.00.
- 3rd. To establish a plant for the lighting by electricity of the streets of said town, and
- 4th. To pay the damages, costs and expenses for opening Jefferson and North Streets in said town, in part already incurred and in part to be incurred hereafter.

The 3rd and 4th items are undefined in their respective amounts, but are assumed to cover the remaining amount of the proposed \$40,800.00 of increased bonded debt.

The last assessed valuation of taxable property in the town of Bloomsburg was \$2,239,624.00, upon which the permissible amount of town indebtedness at 2 per cent. would amount to \$44,792.00, being in excess of the principal of the present bonded debt \$6,852.00.

It will be seen that of the total increase of bonded debt of \$40,800.00, \$19,500.00, are to be appropriated to the funding of existing debt for town orders, and the Ringrose judgment and expenses. In other words to change an existing debt, to that amount, from a floating to a funded form, leaving only \$21,300.00, as properly belonging to the proposed increase of town debt for the undefined electric light outlay, and for past and future expenses in the opening of Jefferson and North Streets.

And it is provided in the ordinance and notice to the electors of the town, published in pursuance of the ordinance, that a single vote of assent, or dissent, shall be given by the electors to this entire project of bond issue by the town.

The action of the Council is professedly taken under authority of the 8th Sec. of the 9th Article of the State Constitution and the provisions of the Act of Assembly of the 20th of April 1874, P. L. 65, and the supplement thereto passed the 9th day of June 1891, P. L. page 252, the proper construction of which becomes important in the present suit.

to electors of a municipality of the single question of debt increase independent of and disencumbered from all other questions relating to the business or affairs of the town, and that the certain effect of uniting several subjects of various merits and character in a single vote of electoral assent or dissent, is an unfair and fraudulent exercise of municipal authority and that for these reasons, the ordinance and all action under it should be pronounced null and void.

To the plaintiff's bill of complaint the defendants now interpose a demurrer, which, admitting the facts set forth in the bill of complaint avers that the plaintiff is not entitled to the relief prayed for because the Court has no jurisdiction over the subject matter of complaint, that the bill is defective as to parties and that the plaintiff is not entitled to maintain his bill.

To the averments made in the 5th and 7th divisions of the demurrer, that there are not proper parties to the bill and in particular that the plaintiff has no sufficient interest and standing in court to maintain his position as complainant, the answer may be made that by amendment of the bill objection that the town of Bloomsburg was not made a party defendant has been removed. The interest of the plaintiff as a taxpayer of the town is sufficient in extent and character to constitute him a proper party complainant. This latter point is established by many authorities from among which may be cited 4 Brewster, 133, Sank and Megory vs. City et al. Page et. al vs. Allen et al. 58 Pa. St. 338. Bergner et al. vs. The City Council. 1 Pearson, 291. 1 Allen (Mass.) 103. Am. & Eng. Encyl. Vol. 10, page 959-601-293. American Digest 1893 page 3527.

In the case of Spencer vs. Joint School District, 15 Kan. 259. Mr. Justice Brewer granted an injunction at the suit of a single taxpayer restraining the case of a school house for evening meetings, upon the ground that such was not the purpose of its erection. He held that the extent of injury or benefit sustained by the plaintiff and others would not be inquired into by the Court.

In the precisely similar case of Wier vs. Day, 35 Ohio, 143, in which the lease of a school house for a term of weeks was enjoined, the Court said: "As a resident taxpayer in the District it is the plaintiff's legal right to have the corporate property used solely for corporate purposes and any diversion of the property to other uses is an injury to him in law."

In the similar case of Schofield vs. School District, 27 Com. 499, the court said that while the injury to the Complainant might not be serious, it was substantial.

And in the recent case of Morton, et. al. vs. the city of Phila., 4 Dist. Rep. 523 which was subjected to elaborate argument, it was unquestioned that a taxpayer's bill could be maintained for an unlawful exercise of corporate power, resulting in slight pecuniary damage to the parties complainant, although in that case Judge Thayer ruled that the transportation of the Independence Bell to the Atlanta Exposition, at the expense of the city was not an unlawful exercise of municipal power. In Naile vs. City of Austin, (Tex. Co. App.) 21 S. W. 375, Am. Dig. page 3527, Sec. 810, it is held that a citizen taxpayer has a right to an injunction restraining the issue of bonds, to be paid by taxation, alleging that they are being issued for an unlawful purpose, although apparently for a lawful one.

The several averments of the demurrer that the provisions of law made for contesting, or reviewing, political elections for the choice of public officers, have no application to the proposed election in the Town of Bloomsburg, appear to be well founded, but instead of constituting an objection to the bill constitute one of the main reasons in its support. It is because there is no adequate remedy at law that equitable jurisdiction can be invoked. Otherwise the plaintiff would be without remedy. The proposed election would determine rights of property belonging to the taxpayers and not the right to a political office fixed and established by law.

The 6th division of the demurrer avers that the bill is apprehensive, and upon that ground cannot be maintained. But upon this point the rule appears to be that a bill will be maintained where the danger apprehended is likely to occur unless injunction be granted.—Hilliard on Injunctions, Chap. I., Sec. 5 and 38.

In the present case the 6th Section of the bill charges, "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 for the Town."

The matters so alleged are admitted by the demurrer to be true. Imminent peril of an affirmative result to the election, with all consequences resulting therefrom, is therefore apparent. Moreover it was certain at the date of the bill that the election, with

its preparatory and accompanying expenses would be held, and the plaintiff as a taxpayer damaged thereby.

The remaining and principal question raised by the demurrer is upon the jurisdiction of the Court sitting in equity to restrain the defendants from executing the ordinance of May 21st, 1895.

The plaintiff contends that such jurisdiction is conferred upon the Court by the Jurisdictional Act of 1836 passed originally for Philadelphia but subsequently extended to all the counties in the State; inasmuch as the ordinance was an unlawful exercise of power and injurious to public and individual rights.

We are thus lead to inquire whether the ordinance and the proceedings under it, actual and contemplated, are authorized by the 8th Section of the 9th Article of the State Constitution, and by the enforcing Acts of April 20th, 1874, P. L. page 65, and 9th of June, 1891, P. L. page 252.

The Constitutional provision forbidding a municipal debt beyond two per cent. upon the assessed value of property in a municipality—without the express assent of the voters thereof, at a public election implies that a distinct and separate vote shall be taken upon the proposed increase, and does not authorize the blending of other subjects or questions with such increase in the vote to be taken.

And still more clearly do the Acts of 1874 and 1891, bar the intrusion of other questions beside debt increase into the popular vote.

The form of ticket to be voted at the election is carefully prescribed by the Act of 1891, and to prescribe it as mandatory was apparently the main object of that supplementary enactment. The Act provides that the tickets voted shall be "labeled on the outside" "increase the debt" and containing on the inside the words "no increase of debt" or "debt may be increased"; also briefly, the purpose and amount of increase, so that each voter shall have distinctly before him at the time of voting, accurate information of the amount and object of the increased indebtedness to be sanctioned by his vote.

Again the 5th Section of the Act of 1874, having very plainly defined the word "indebtedness" as used in the Act, as including, "all and all manner of debt as well floating as funded, of the municipality" and providing for certain deductions therefrom of available means of payment, in order to fix the true amount of existing debt, when an increase thereof is proposed, in its third Section (re-enacted in 1891) requires, that the notice to electors, "shall contain a statement" "of the amount of the last assessed" "valuation, of the amount of the" "existing debt, of the amount and" "percentage of the proposed increase," "and of the purposes for which the" "indebtedness is to be increased." No language could more clearly exclude from the election notice, and from the election vote any question not relating to a new, future debt, asmissible for popular decision under the law.

And again, it is evident that under the third and other sections of the Act of 1874, the authorities of no municipality have power conferred upon them to submit to a popular vote any question of assent or dissent, to their proceedings actual or proposed except the single one of increasing the public debt of the municipality, as defined and provided for by that Act.

But it is equally plain that the ordinance, notice to electors, and election tickets provided for, include no less than \$19,500.00 of existing debt, as a part of the increase of debt to be voted upon at the election.

In other words, four or five separable, distinct questions, in part authorized and in part unauthorized by law, are jumbled together for a single affirmative or negative vote of the Electors of the Town.

A bond issue is to be sanctioned by them to redeem outstanding Town orders, the Ringrose judgment expenses, to provide an electric light plant, and to open two streets named respectively North and Jefferson. It is a fair if not a necessary conclusion, that an ordinance which lets loose upon the voters of the town of Blooms-



**Mr. J. L. Grissinger**  
**Nervous and Weak**  
 All broken down, unable to sleep, distress and burning in my stomach, smothering and choking spells—this was my condition when I began to take Hood's Sarsaparilla. I have taken 3 bottles and feel like another man, can work with ease, weigh over 200, and am cured. I shall ever be ready to praise Hood's Sarsaparilla. J. L. GRISSINGER, New Grenada, Pa.  
**Hood's Sarsaparilla Cures**  
 N. B. Be sure to get Hood's and only Hood's.  
 Hood's Pills are endorsed by thousands

**JOHN R TOWNSEND,**  
**AND**  
**Hatter.**  
**Merchant TAILOR,**  
**SUITS FROM \$18.00.**  
**TROUSERS FROM \$5.00.**  
 CORNER MAIN & MARKET Sts.  
 BLOOMSBURG PA.

## We Never Take a Back Step.

That means something. Neither are we satisfied with standing still. There's a force constantly at work that tends to bring this store closer to those who buy dry goods. Perhaps your experience here after trying other stores will tell you what it is.

### BLANKETS.

We have just received one full line of blankets of all sizes, kinds and description. Better Blankets, we can truthfully say, as the ones we are selling at \$4.00, white, woolly and full of warmth, are exceptional in fine. All the difference is \$1.00 in your pocket, as you would more than likely pay \$5.00 for them elsewhere. Worth saving, isn't it? We also have others at prices from \$1.00 to, well, any price you want.

### BLACK GOODS.

We never had as nice a line of black dress goods as we are showing now. All kinds, all prices and all grades. Do you want a nice black Henrietta for 80c. the yard? We used to sell it at \$1.25. None better in the market. We also have Boucle crepon, and serges in black. Have you seen the piece of Boucle black we are selling at 50c. the yard? If you have not, you should, as it is a rare bargain.

### DRESS GOODS.

The cool weather of October is here now, and you will want a good warm winter dress. If you do not want an expensive one, we can sell you one at 25c. the yard. It is an all wool serge, 36 inches wide, and an elegant piece of goods. If you want some thing better, we can give

you an all wool serge, 50 inches wide, think of it, 50c. the yard. We are showing the newest and most exclusive styles in all the newest shades of Boucle crepon and novelties of dress goods in the market. Nothing better or cheaper than here.

### LAMPS.

It is now coming the time of year to think of your lamps. It is getting dark early, and too cold to sit out. Do you want a lamp? We are sure we can suit you in one.

We have the common glass lamp for kitchen use, from 20c. to 50c. each, according to size of lamp. Then we have the China lamp, beautifully decorated, used to be \$3.25, now \$2.25; nothing better—full central draft burner. Maybe you want a banquet lamp. We have an elegant line. The lamps are in themselves elegant, and the shades or globes—we have both—add greatly to their beauty. Anywhere from \$1.25 to \$7.00 for the lamps, and from \$1.25 to \$3.25 for shades. Globes in Dresden or ground glass.

### JARDINIERS.

Have you seen our Jardinières? They are elegant. Any size you want. Plain or handsomely gilded. None more beautiful or less expensive any where. Our window is full of them.

## PURSEL & HARMAN, BLOOMSBURG, PENN'A.

The case of Baren vs. Smith 47 Ill. 482, is to the same point. Walker J. there held, in relation to the removal of a county seat, as follows: It is urged that the Court below had no jurisdiction to entertain the bill. It is no doubt true that a Court of Equity will never interfere to determine which of two persons has been elected to an office or to try the rights of parties to hold an office.

In such cases the law has afforded adequate and appropriate remedies. Still this is not a contested election. It is to determine whether citizens of a county have a legal right to transact public business. It is true it may incidentally involve the question whether the vote has been fairly taken and if fraud has been committed, to purge the polls. As the Constitution and the law have failed to afford a specific remedy to prevent this provision from being defeated it is eminently proper that equity should afford the requisite relief in such cases.

See also 48 Ills. 263, People of State of Ills. ex. rel. Wherton vs. Wiant. 67 Ills. 455, Shaw vs. Smith.

And now October 8th, 1895, for the foregoing reasons the demurrer is overruled and the defendants are required to answer over and the preliminary injunction is continued until final hearing or further order of the Court.

BY THE COURT,  
 E. R. IKELER, P. J.

### Unfortunate Accident.

Whilst engaged at her household duties Monday morning, Mrs. Lucy Pursel, mother of Samuel Pursel, who resides on Fifth street, had the misfortune to fall on the cellar steps fracturing both bones in her wrist. Dr. J. W. Bruner was summoned, reduced the fracture, and she is getting along as well as could be expected.

Col. William Leverett Chase died Oct. 7th in Boston, aged 42. He was the surviving partner of the firm of H. & L. Chase, well-known manufacturers of jute and cotton goods. Col. Chase was a nephew of Rev. William C. Leverett.

During Fair go to M'Killip Bros. for fine photographs and crayons. Over H. J. Clark & Son's store.

### The Lutheran Harvest Home.

This annual occasion was celebrated in the Lutheran church last Sunday with a beautifully decorated church, an interesting program in the Sunday School largely rendered by the little folks and the Holy Communion. It was a fair day and the congregations were large, filling church and lecture room. In the Sunday School a pillar had been assigned to different individuals to decorate and each used his or her own judgment. All were very handsome. The altar was arranged by two others and the chandeliers by others still, so that the S. S. room looked like a well kept garden.

The flower committee of the C. E. had charge of the decorations up stairs and constructed a large pyramid of fruits and grains out of which a cross arose covered with grapes. The whole formed a very pretty back ground for the communion table covered with its snow white linen. Seven persons united with the church in the morning. In the evening the Pastor preached a Harvest Home Sermon on the text "Thou crownest the year with thy goodness." The choir rendered some choice music.

### THE PURMAN-BREAKSTONE CONCERT

The Espy people provided a very interesting entertainment for a large audience last Saturday evening in the Lutheran church of this place. It was gotten up largely by the Purman family of Espy, assisted by Miss Breakstone of Wilkes-Barre, who rendered some choice recitations, accompanied on the piano by Prof. Elwell of Bloomsburg. The little Misses Purman delighted everybody with their songs and duets. Miss Fay Purman sang very beautifully several solos entirely from memory, which always adds to the interest. She is a student at the Boston Conservatory and gives promise of being an accomplished singer.

The same concert was given in Catawissa on Friday evening, the proceeds of both going to the new Lutheran church at Espy.

Rev. Rupley had things in charge and publicly thanked everybody for their interest and help. A large number of the Espy people came down to attend the concert.

A fresh line of Tenny's candies just received at William H. Slate's.