

Democrat and Sentinel.

THE BLESSINGS OF GOVERNMENT, LIKE THE DEWS OF HEAVEN, SHOULD BE DISTRIBUTED ALIKE UPON THE HIGH AND THE LOW, THE RICH AND THE POOR.

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From the Pennsylvania Inquirer.

APPLICATION TO RESTRAIN THE SALE OF THE MAIN LINE.

WEDNESDAY, JUNE 17.

SUPERIOR COURT.—Chief Justice Lewis, and Justices Lowrie, Woodward, Knox and Armstrong.

The case of H. S. Mott, et al. vs The Pennsylvania Railroad. The Governor of Pennsylvania et al., an application for an injunction was argued yesterday. Mr. W. L. Hirst opened the argument in behalf of respondents. He said there are on the file of the Court, three bills in equity, two of which it was proposed to argue to-day. The first bill is filed by one of the Canal Commissioners, another at the instance of a stockholder and incorporator of the Pennsylvania Railroad Company, and a third filed by a loan-holder, the county of Allegheny on behalf of 20,000 shares of stock.

In reference to the first bill filed by the Canal Commissioners, a question of interest arises involving some of the first principles of a republican government. It is provided in one of the sections of that bill, that the Pennsylvania Railroad Company shall be discharged from all taxation on its capital stock, bonds, dividends, and property. If the Legislature can sell to one corporation, with an exemption of taxation, it can sell to any corporation, citizens or municipality. This was the fair and legitimate scope of the constitutional question now before the Court. It was instituting a privileged class to be exempted from sharing the common burdens of this Commonwealth. There is involved in this case the question concerning the universal right of the Legislature to sell exemptions to last forever. It was submitted that the Legislature have no power to make such contracts. The clause in the Constitution, under which this act is passed, is found in the first article of the Constitution, granting legislative power. The nature of this power is a trust. The sovereignty of the State is in the people, which is manifested by the Constitution itself. This principle is well settled by federal and State adjudications. This trust is to be executed like any other trust.

Mr. Hirst then referred to judicial definitions of taxation. Government presupposes the power of taxation, for no government could exist without it; it is a power vital to the existence of the government, which cannot be relinquished. There is a constitutional definition of the word taxation in the 20th section of the first article of the Constitution of this State, providing that bills for raising revenue shall originate in the House of Representatives, and also the section providing that no money shall be withdrawn from the Treasury unless by appropriation by law. If the Legislature use the funds for any other purpose than those granted by the provisions of the Constitution the Supreme Court will restrain them.

These are rules of construction which govern Courts and the Court will construe the Constitution like any other instrument. It has been decided that no one Legislature can control the future acts of another. The decision of the Supreme Court of this State establish and confirm the proposition that taxation is incident to sovereignty. Such power should be used with moderation; it should be equal and universal; there should be no exemption or relinquishment. The exemption of a few imposes heavier burden on the remainder. Taxation being a mode of raising revenue should be just and equal. This is a maxim established by all elementary writers.

The Legislature have no more power to embarrass the right of taxation than they have to embarrass the right of the people to elect their own representatives. Should the Legislature be permitted to sell exemption of taxation ad libitum, in times of emergency such as an invasion, we would be utterly powerless for means. It is a dangerous power to invest in any body of legislators, no matter how virtuous. It is asserted by the respondents that the Supreme Court of the United States have affirmed this power. Mr. Hirst pronounced this not to be so, that as yet the question was an open one.

He then proceeded to show by a synopsis an analysis of the adjudicated cases by the Federal Supreme Court, that his proposition was correct, and questioned the binding force of these decisions upon our State Courts.

He then proceeded to discuss the merits of the bill filed by a corporator and stockholder, alleging that he dissent from such a transac-

tion; and that the Company have no power or authority to embark in it without his consent.

Mr. Hirst proceeded to read the Act of Assembly in its various provisions in relation to the sale of the Main Line, maintaining that the Legislature might as well have conferred the power of selling the road upon a mere auctioneer as the Governor, and that the provision of the act confiscating the stock of a stockholder, by reason of his dissent, was unconstitutional; that the Company had the corporate right under their charter to coerce a majority; their charter and the stock of the stockholders were inviolable; that the limitations in the charter denies to the Company the right to embark in this enterprise.

These propositions were supported by a number of authorities of the Federal and State Courts.

Mr. Campbell followed in behalf of the defendants. The first question for consideration was—Will the Court grant a special injunction to prohibit obedience to an act of Assembly upon the application of such parties, or upon such a case as is made by either bill? In regard to the right of the respective parties asking the intervention of the Court, he said that the Canal Commissioners are such, are not entitled to relief, having no property or interest in the works to be sold, but are only the superintendents to guard the property of the Commonwealth and to obey their commands. They can have no relief as tax-payers, for they do not aver that their taxes will be augmented by the sale. The stockholder is not entitled to a special injunction, because the acts complained of are not in violation of, but in obedience to the law; because he has intruded himself into the corporation for the purpose of creating litigation and preventing the acceptance of the law. He can suffer no such injury as entitles him to the summary relief sought—his interest is insignificant and indemnity is tendered him.

The bills presented purport to be for the purpose of preventing the sale, but are really to restrain competition. No person, by purchasing stock, pending the grant of powers to a quasi public corporation, can be entitled to a special injunction prohibiting the use of such extended authority, and deprive the people of advantages designed to be secured by such legislation.

In the case of Marbury vs. Madison, 1st Cranch, 137, which was an application to the Supreme Court of the United States for a mandamus to the Secretary of State of the United States, Mr. Lee, in arguing in support of the application, distinctly admitted that the court had no jurisdiction to issue a mandamus to the President in any case whatever, and that the Secretary of State was not liable to a mandamus in respect to any official acts in reference to which he acted under the direction of the President. The court, in the opinion in the same case, expressly disclaim any right to attempt to interfere with the President in the exercise of his executive prerogative, pp. 165-6, 169-70.—

Where the head of a department, "says they," acts in a case in which he is the mere organ of executive will, any application to a court to control in any respect his conduct, would be rejected without hesitation. It is scarcely necessary for the court to disclaim all pretensions to such a jurisdiction. An extravagance so absurd and excessive could not have been sustained for a moment. The province of the court is solely to decide on the rights of individuals not to inquire how the executive or executive officers perform duties in which they have a discretion. Questions in their nature political, or which are by the constitution and laws submitted to the executive, can never be made in this court."

2d. Are the complainants, as public officers, entitled to bring the public rights into this Court to be adjudicated upon, and to contest the validity of an act of the Legislature on account of its bearing on the public interests. The opinion of the Court, completely overthrows this position, and demonstrates the right of the Legislature to exempt specified property from taxation, relinquishment, commutation or limitation. See p. 383 to 391.

This case was reviewed and affirmed in Dodge vs. Woolsey, 18th How., 331.

The principal is also contained in many other cases.

See Hardy vs. Walther, 7th Pick, 110.

Atwater vs. Woodbridge, 6th Conn, 323.

Seymour vs. Hartford, 21st Conn 481.

Our Legislature have frequently passed laws exempting property from taxation. See 7th section, Act 1st March, 1780, 1st Smith's Laws, 489, exempting lands granted to soldiers, &c., during their lives, and act of 16th of March, 1785, section 33, 2d Smith, 287, to same effect, and those acts acknowledged in Finney vs. Commissioners of Mercer county, 1st S. & L., 62.

Coney vs. Owens, 6th Watts, 435, see per Kennedy, Just p. 438.

Act of 16th April, 1838, pamp. p. 514, exempts churches, colleges, &c.

And the numerous acts exempt particular properties from taxation.

Act of 5th April, 1849, pamp. p. 360

exempts certain certificates of loan of certain municipal corporations from taxation, except for State purposes.

Act 4th May, 1852, authorizes the Governor and State Treasurer to borrow five millions, and issue bonds which shall not be subject to taxation for any purpose whatever.

Act 19th of April, 1853, sect. 92, pamp.

p. 604, authorizes Governor and State Treasurer to issue bonds of Commonwealth for money borrowed, not subject to taxation for any purposes whatever.

Act of 18th May, 1857, sect. 70, extends this provisions for two years.

Act of 1st of May, 1854, pamp. p. 535,

exempts certain loans of city of Philadelphia; &c., from taxation, except for State purposes.

THOS E. FRANKLIN, Attorney General.

titled to receive any portion of the said incomes and revenues; but the same are payable of right into the State Treasury, and the legal possession of the said public works is in this Commonwealth.

That by an act of Assembly, approved the 16th day of May, A. D. 1857, entitled "an act for the sale of the Main Line of the Public Works," it is among other things made the duty of the Governor to give public notice of the time and place of sale, and to have offered at public sale the whole Main Line of the public works, in manner and form as in the said act is prescribed.

Whether, therefore, the Pennsylvania Railroad Company, or their agents, promoted the passage of the said act of Assembly, with the view and intent of becoming the purchasers, and whether alleged in the said bill, the said public works have been a source of revenue and profit to the State Treasury for five years past, or whether on the other hand, as is with glaring and gross inconsistency alleged by Henry S. Mott, one of these complainants, in his bill simultaneously filed, they have not for many years yielded income sufficient to pay the cost of keeping them in navigable order, are questions upon the consideration of which this cannot enter, and which cannot in any degree affect the determination of the case.

That the said act, so far as this affiant knows or is informed and believes, was a legitimate and constitutional exercise of the legislative power, and was passed in pursuance of a policy deliberately adopted by the Legislature and sanctioned by the people: as expressly declared by popular vote and by repeated acts of legislation: and that this affiant, in discharge of the executive duty imposed upon him as Governor of this Commonwealth, has advertised the said Main Line of the public works for sale: that it is an design and purpose in all respects to perform the duty imposed upon him, and to comply with and obey the said act of Assembly: and he denies the right or the power of this court to obstruct or interfere with him in the exercise of his functions as supreme executive officer of this Commonwealth.

JAMES POLLACK,
Governor of Pennsylvania.
Sworn and subscribed this 15th day of June, A. D., 1857, before me

JOHN B. KENNEY, Attd.

MOTT ET AL VS PENNSYLVANIA RAILROAD COMPANY, ET AL.—Brief on behalf of Gov. Pollack.—The Governor is not amenable to this court or to any court for the exercise of his executive functions: but is responsible only in the mode pointed out in the constitution. Any judicial interference with the prerogative or the executive, or with his acts as Governor in accordance with the directions of the Legislature, would be a violation of the constitution, the natural effect of which would be collision between the different departments of the government.

In the case of Marbury vs. Madison, 1st Cranch, 137, which was an application to the Supreme Court of the United States for a mandamus to the Secretary of State of the United States, Mr. Lee, in arguing in support of the application, distinctly admitted that the court had no jurisdiction to issue a mandamus to the President in any case whatever, and that the Secretary of State was not liable to a mandamus in respect to any official acts in reference to which he acted under the direction of the President. The court, in the opinion in the same case, expressly disclaim any right to attempt to interfere with the President in the exercise of his executive prerogative, pp. 165-6, 169-70.—

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2d. Are the complainants, as public officers, entitled to bring the public rights into this Court to be adjudicated upon, and to contest the validity of an act of the Legislature on account of its bearing on the public interests. The opinion of the Court, completely overthrows this position, and demonstrates the right of the Legislature to exempt specified property from taxation, relinquishment, commutation or limitation. See p. 383 to 391.

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principle was conclusively established by the Supreme Court of the United States, in Fletcher vs. Peck, 6th Cranch, 129-131, and was recognized and acted on by our Supreme Court, in Jones vs. Jones, 2d Jones, 250. See also on this point, the remarks of Black, Ch. J., in Sharpless vs. Mayor of Philadelphia, 9th Har., 161-2.

Whether, therefore, the Pennsylvania Railroad Company, or their agents, promoted the passage of the said act of Assembly, with the view and intent of becoming the purchasers, and whether alleged in the said bill, the said public works have been a source of revenue and profit to the State Treasury for five years past, or whether on the other hand, as is with glaring and gross inconsistency alleged by Henry S. Mott, one of these complainants, in his bill simultaneously filed, they have not for many years yielded income sufficient to pay the cost of keeping them in navigable order, are questions upon the consideration of which this cannot enter, and which cannot in any degree affect the determination of the case.

The naked question, therefore, results, whether the tender to the Pennsylvania Railroad Company, or their agents, for exemption from the tonnage tax and from other State taxes upon their bonds and property, upon their becoming the purchaser of the Main Line, and paying a million and a half dollars in addition to their bond, is an unconstitutional assumption of power by the Legislature, which renders the said county the owner of (20,000) twenty thousand shares of the capital stock of the Pennsylvania Railroad Company, and have owned and held the same for nine years, last past; that a bill has been filed in this honorable Court in the above cause, setting forth that the said Company threatens and intends to become the purchaser of the Main Line of the Public Works of the State, according to the terms and provisions of the act of Assembly of May 16th, A. D. 1857, referred to in the said bill, and praying for the causes and reasons therein assigned, that the said Company, their officers, servants and agents, and the other defendants named in the said bill, may be enjoined, by the decree of your honor, from purchasing the same.

Your petitioners therefore pray that your honor will permit them to become parties complainants to the said cause, and aid and assist in prosecuting the same,