

OPINION IS GIVEN IN FULL

(Continued from Page Two)

do acts of charity or gratitude for the municipality, though this cannot be considered as established."

In the 37 Cyc. at page 723, we have the following "Taxation to raise money for the payment of the public debt is always recognized as being for a public and legitimate purpose and this, although the particular debt or claim against the state or municipality rests only upon a moral obligation and would not be enforceable at law. This principle, however, cannot be extended to include a mere gratuity not based upon any obligation legal, equitable or moral. And it has also been held that the payment of claims which are void as arising under a statute which has been decided to be unconstitutional is not a legitimate object of taxation. Where the public officers in the honest and faithful discharge of their duty have been subjected to loss or damages the responsibility for which does not properly attach to themselves, it has been held proper for the state or municipality to reimburse them and that taxation for the purpose is legitimate although there are decisions to the contrary."

In the case of Creighton vs. San Francisco, 42 Cal. 446, the supreme court of California in its opinion says:

"The power of the legislature to appropriate the moneys of municipal corporations in payment of claims ascertained by it to be equitably due to individuals, though such claims be not enforceable in the courts, has been uniformly upheld ever since the case of Blanding vs. Burr, 13 Cal. 351, in which this court said, 'The power of appropriation which the legislature can exercise over the revenues of the state for any purpose which it may regard calculated to promote the public good, it can exercise over the revenues of a county, city or town for any purpose connected with their past or present condition, except as such revenues may, by the law creating them be devoted to special purposes. The sovereign power of appropriation of the public funds already in the treasury or to be raised by taxation in favor of individuals is one, the exercise of which must depend largely upon the legislative conscience and like most of the great powers of government cannot be interfered with by us unless in exceptional cases. The most usual cases in which this power has been exercised are those like the one under consideration now, where an individual, having no legal claim, in the sense of being capable of enforcement by judicial proceedings against a municipal government, has nevertheless in equity and justice in the larger sense of these terms a right to indemnity and compensation out of public treasury. As was said in Deno J. 3 Kern, 149, 'The legislature is not confined in its appropriation of the public moneys or of the sums to be raised by taxation in favor of individuals to cases in which a legal demand exists against the state. It can thus recognize claims founded in equity and justice in the largest sense of these terms or in gratitude or charity. Independently of express constitutional restrictions it can make appropriations of money whenever the public well being requires or will be promoted by it and it is the judge of what is for the public good.'"

In the case of Yamhill county vs. Foster, 53 Ore. 131, Justice Bean in delivering the opinion of the court says: "A county may therefore, be required by law to apply all or part of its fund to any legitimate public purpose so long as it does not conflict with some constitutional provision."

William Desmond, a policeman of the city of St. Louis, shot at a wild steer that was running at large in the streets of St. Louis endangering the people and killed a boy, thus verifying the words of the poet when he wrote, "Many an arrow at random sent Hits marks the archer little meant."

The supreme court of Missouri in the case of state vs. City of St. Louis 61 L. R. A. 593, held that the city of St. Louis had the right without an act of the legislature to reimburse the policeman for damages because he was compelled to pay for wounding the boy.

In the case of Mount vs. state, 45 Am. Rep. 192, the facts were these. William J. Richey, the relator, was the trustee of Finley township and as such deposited as his predecessor for a long time had done funds of the township in a private bank of another state; the bank failed, the money was lost and Richey reimbursed the township. The taxpayers petitioned the legislature to refund the money to him and in accordance with the prayer of the petition an act was adopted directing that the township trustees should refund it, the trustees refused and Richey applied for and received a writ of mandamus. The supreme court of Indiana in holding the act valid says in its opinion:

"It may be true that the policy of refunding money to an officer who has lost it by the failure of a bank is a vicious one and to be condemned but it affords no ground for overturning a legislative enactment. Courts cannot overthrow legislative acts upon the ground that they are vicious in their policy or evil in their tendencies. Statutes must stand unless found repugnant to some express provision of the constitution." A learned jurist of this state has stated with unusual

clearness and vigor the rule on the subject. "The legislative authority of the state," said he, "is the right to exercise supreme and sovereign power, subject to no restriction except those imposed by our own constitution by the federal constitution and by the laws and treaties under it." Beauchamp vs. State, 6 Blackf. 299. The claim of the relator could not have been enforced by an action prior to the adoption of the act passed for his relief and if it be true as contended that the legislature can only provide for the payment of claims enforceable by a civil action, the appeal must be sustained. But this is not true. In town of Guilford vs. supervisors, 13 N. Y. 143, it was said, "The legislature is not confined to its appropriation of the public moneys, or of the sums to be raised by taxation in favor of individuals to cases in which a legal demand exists against the state. It can thus recognize claims founded in equity and justice in the largest sense of these terms, or in gratitude or charity. Independently of express constitutional restrictions it can make appropriations of money whenever the public well being requires or will be promoted by it, and it is the judge of what is for the public good." This, although too broadly stated, is the doctrine of the cases of Thomas vs. Leland, 24 Wood. 65; Brewster vs. City of Syracuse, 19 N. Y. 116, and New Orleans vs. Clark 95 U. S. 644. We do not approve the doctrine to the extent it is carried in the extract quoted, but we do hold, that in so far as it declares that the legislature is not confined in the allowance of claims to such as are enforceable by action, the decision is correct."

In the case of Board of Education vs. McLandsborough, 38 Am. Rep. 582, the supreme court of Ohio held that an act of the legislative assembly of the state reimbursing a school district treasurer for money stolen from him without any fault on his part not in violation of the constitution of Ohio providing that no law shall be passed by the legislative assembly impairing the obligations of a contract.

The following authorities sustain the right of legislative assemblies and municipalities to reimburse public officials where there is a moral obligation so to do. Bancroft vs. Inhabitants of Lynchfield, 29 Am. Dec. 623 (Mass.).

Morehead vs. Murphy, 3 Am. & En. Annotated cases, 434.

It is contended by counsel for the plaintiff that the act in question is violative of and repugnant to the following provisions of the constitution of the state of Oregon, to-wit:

Art. 1, Sec. 21.—Providing, that no law shall be passed impairing the obligation of a contract, the taking effect of which shall be made to depend upon authority, except as provided in the state constitution, Art. 1, Sec. 32. Providing that all taxation shall be equal and uniform. Art. 1, Sec. 33. Providing that the enumeration of rights and privileges named in said constitution shall not be construed to impair others retained by the people.

Art. 1, Sec. 3. Providing that no tax shall be levied except in pursuance of law and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

The only provision of the constitution above cited, that it can possibly be claimed that the act has violated is Art. 1, Sec. 21. Providing that no law shall be passed by the legislative assembly impairing the obligation of contracts. So far as reimbursing Sheriff Childers is concerned it is clear that this provision has not been violated for the reason that the complaint alleges that Childers has made good to the county the loss caused by the failure of the bank. His bondsmen are therefore released from any further liability upon the bond. Again if the county was bringing action against Frawley and his sureties upon his bond and they should plead that the act of the legislative assembly cancelling the obligation in defense then it might be claimed by the county that such act impaired the obligation of the bond that it had with Frawley and his sureties and was therefore unconstitutional. However, we have no such condition here. The county is not trying to have the act declared unconstitutional but the county court, the official representative of the county is appearing by the district attorney to have the act held valid and constitutional. Furthermore the case of board of education vs. McLandsborough, supra, holds that such an act is not violative of a provision in a constitution providing that no law shall be passed impairing the obligation of a contract.

The case of Simon vs. Northrup, 27 Ore. 487, is not in point. That decision simply holds that an act of the legislature requiring Multnomah county to pay the interest and principal of the bridge bonds of the city of Portland void for the reason that it requires one public corporation to pay the debt of another. If the legislature had passed an act that Baker county should reimburse Childers and Frawley there would be no question but that such an act would be void because there is no moral or legal obligation for Baker county to reimburse officials of Union county.

The legislature by passing the act in question has found that the reimbursing Frawley and Childers is a public purpose and while the courts perhaps may review this finding yet the finding is conclusive unless baseless. Pearson vs. State, supra.

It is not for the courts to say whether or not a statute that is constitutional is a wise piece of legislation

Lawson vs. Lawson, 11 Pac. 354.

It follows from the above conclusions that the plaintiff has not established to the satisfaction of the court beyond a reasonable doubt that the act in question is unconstitutional and therefore the demurrer in both the cases of Miller vs. Childers, et al, and Miller vs. Frawley, et al, should be sustained.

J. W. KNOWLES,
Circuit Judge.

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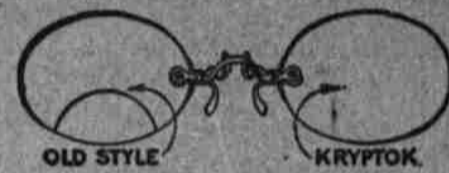
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