

THE PUBLIC PRINTING

Case Argued in the Supreme Court.

THE DEFENDANTS DEMUR

THE CASE PUT BEFORE THE COURT ON THE LAW.

DID LEGISLATURE MAKE A CONTRACT?

If so Can it be Enforced by Mandamus Against the Committee to Whom the Award of the Public Printing Was Given?

The Public Printing case was argued yesterday, from 10 to 1 o'clock, before the Supreme court.

The title of the case in the courts is Capital Printing Company vs. Clyde R. Hoy and others, as members of and composing the Joint Committee on Printing, Cyrus Thompson, Secretary of State, C. B. Edwards and N. B. Broughton, trading as Edwards & Broughton, and E. M. Uzzell.

The case for the plaintiff was argued by Alex J. Field and R. H. Battle; for the defendants, Edwards & Broughton, by T. B. Womack, and for the committee by J. N. Holding.

It took half an hour to read the material parts of the record.

At its conclusion Judge Womack read the following demurrer:

"The defendants other than Cyrus Thompson, Secretary of State, come before this court by their respective attorneys and move the court to dismiss this action and affirm the judgment of the court below, and in support of their said motion, file this as their demurrer on terms.

"They aver that the complaint does not constitute a cause of action, and that this court is without jurisdiction to hear and determine the same, for that:

"1. This is, in effect, an action against the State of North Carolina, without its consent, and in a court which is without jurisdiction in actions against the State, Constitution Article IV, Section 9.

"2. Under the provisions of the statute relied upon by the plaintiff the Joint Committee on Printing was given deliberative, judicial and discretionary powers, which extended until the making, execution and delivery of the contract required by the statute, which this court cannot control; especially in the absence of all allegations of fraud or mala fides.

"3. Mandamus is not a proper remedy, in that the plaintiff does not establish a clear legal right to the relief sought.

"4. The Joint Committee on Printing have exhausted their authority by making, executing and delivering the contract to the defendants Edwards & Broughton and E. M. Uzzell, and they are themselves, being a legislative committee, functi officio, during the recess of the General Assembly.

"5. The relief sought cannot be granted for that which has been done cannot be undone by mandamus.

"6. Mandamus being a legal remedy equitable relief cannot be granted therein, either for the specific performance of the alleged contract with the plaintiff or the injunction sought against Edwards & Broughton and E. M. Uzzell.

"7. This action being returnable before the judge and not to term time, injunction cannot issue.

"8. The court cannot try the rights of Edwards & Broughton and E. M. Uzzell, and their respective relations with the State of North Carolina, by virtue of their contract with the State in a proceeding for mandamus.

"9. The court will not determine between conflicting claimants to a duty or thing, in a proceeding for mandamus.

"10. For that there is an adequate remedy at law; as against the State by an action begun by petition before the Supreme court, and as against the other defendants, an action for damages, there being no allegations of insolvency.

"11. For that the court cannot, by mandamus, require or prevent an officer of the State from performing a plain duty of a statute, to-wit: obey the Joint Resolution set out in the complaint, whatever may be the rights of the plaintiff as against the State."

The effect of the above demurrer was, of course, to shut off all argument of fact and put the case before the court entirely on a question of law.

This done counsel proceeded with the argument.

The substance of the complaint was, he said, that the defendants who compose the Joint Committee on Printing, in accordance with the Act of the General Assembly, ratified February 24th, 1898, advertised for bidders and that plaintiff was ascertained and declared to be the lowest responsible bidder for the public printing, and tendered a bond which was adjudged sufficient under the act; and that thereupon the committee, by vote in regular meeting, accepted plaintiff's bid and awarded to it the contract for the public printing; that subsequently the committee declined to sign any written evidence of a contract, but insisted on plaintiff's signing a paper writing which was not in accordance with the act of Assembly, advertisement or bid, and which did not express the contract entered into by plaintiff. That subsequently the committee, in pursuance of a joint resolution of the General Assembly, signed with defendants, Edwards & Broughton and E. M. Uzzell, a paper writing purporting to be a contract for the public printing, thereby ignoring the vested rights of the plaintiff under its contract with the committee. That plaintiff claims that the joint resolution and the attempted contract thereunder, if it is to have the effect contended for by defendants, is unconstitutional and void, because it would arbitrarily take from plaintiff and give to others the right to do the State printing and to receive the compensation therefor; it would take from plaintiff its

property in said right and transfer it to another without compensation and without default on its part, contrary to the Constitution and without due process of law. But plaintiff contends that the joint resolution of March 8th may be so construed, in connection with the Act of Assembly of March 8th, as to harmonize not only with the Act of February 24th, but with plaintiff's rights thereunder, by holding that the contract mentioned in the joint resolution was not to be made unless the contingency arose which is mentioned in the Act of March 8th. "The plaintiff's position is, that while it has a contract for the public printing, it is not recognized by the Secretary of State and other officers of the State as such, on account of the failure of said committee to give the usual written evidence of the said contract; and this action is to compel them by mandamus to do so."

Arguing to these facts Messrs. Field and Battle contended for plaintiff that the members of the committee were ministerial officers only, after they had declared plaintiff entitled to the public printing and approved its bond, that there was no further discretion to be exercised by them. This being so they held that the mandamus was the proper remedy to require them to give plain written evidence of the existing contract.

The members of the joint committee are still in office, inasmuch as (1) the powers conferred upon them by the Act of February 24th were continuous in their nature until their duties are properly discharged; (2) the General Assembly has not adjourned, but has taken a recess till a day certain, (the second Tuesday in June, 1900); (3) the Act of March 8th expressly continues them in office. But even if the court should hold that they are now out of office, still they may be required individually to do what they ought to have done, to-wit, merely reduce to writing and sign the contract which they have already made.

This is not an action against the State, but merely against public officers, to compel them to obey a law and do a merely ministerial act. If the effect of this is to give the plaintiff a written evidence of a contract or right to which he is legally entitled, the State cannot complain, and need not be made a party. Plaintiff is not asking for an award of the contract, but for the usual and proper evidence of a contract already made. The furnishing of this evidence is a mere ministerial duty involving no official discretion.

"There is not one law for the sovereign and another for the subject."

"The State, in all its contracts and dealings with individuals, must be adjudged and abide by the rules which govern in determining the rights of private citizens contracting and dealing with each other. There is not one law for the sovereign and another for the subject; but, when the sovereign engages in business and the conduct of business enterprises, and contracts with individuals, although an action may not be against the sovereign for breach of the contract, whenever the contract, in any form, comes before the courts, the rights and obligations of the contracting parties must be adjudged upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the dealer, contractor and suitor."

Judge Womack and Mr. Holding argued:

1. That the suit was, in effect, an unauthorized action against the State.

The suability of the State without its consent was a thing unknown to law. That has been so often laid down and acknowledged by the courts and jurists that it is hardly necessary to be formally asserted.

2. Mandamus not the proper remedy. Quoting Moses on Mandamus, pages 134 and 135:

"Mandamus will not lie to compel public officers to perfect an incomplete contract which will be binding upon the State, especially where the subject or object of the contract has passed or is sale from the State into the hands of some other person."

"It is upon this principle that it has been held that a mandamus will not be issued on the application of an individual to any officer of the government, commanding him to approve a contract entered into with that individual by public officers, when such approval is necessary in order to make the contract binding upon the State."

3. The powers of the committee were discretionary and deliberative, not subject to judicial control.

It is held in numerous cases that the courts will control the actions of officers by mandamus only in the "performance of a plain, legal duty, purely ministerial;" that such actions are not suits against the State without its consent.

4. A clear legal right a prerequisite in mandamus.

5. The committee is functus officio.

A committee of the Legislature expires with the adjournment, unless otherwise explicitly provided.

6. Mandamus cannot undo what has already been done.

"The writ of mandamus, being a discretionary writ, the fact that the contract has actually been awarded to another is sufficient to induce the courts to decline to interfere to further complicate the matter, even though they might otherwise have done so. State ex rel. Phelan vs. Board Education, 24 Wis., 685."

7. Injunction can not issue in this action.

Injunction can be issued at chambers only until the hearing; and perpetual injunctions must be issued at term.

RALEIGH MAN FOUND DEAD.

(Norfolk Ledger.)

A white stranger was found sitting on the steps in an alleyway on Talbot street, next to Seelinger's bar, this morning, and it was at first thought that he was drunk, but subsequently it was found that he was dead. He was a man about 40 years of age, with whiskers, and plainly but neatly dressed. He had been seen in the neighborhood for several days. The name of the deceased was F. J. Lindley, and papers found on his person would seem to indicate that he was from either Atlanta, Ga., Augusta, Ga., or Langley, S. C. He was employed in Raleigh, N. C., prior to 1898, and was recently in Newport News. The Coroner viewed the body and will hold an inquest.

WORK BEGUN AT RIDGEWAY.

The Ridgeway-Richmond Line Will be Built at Once.

Work was commenced yesterday on the Ridgeway end of the Seaboard Air Line. Already twenty-five miles of the road at the Petersburg end of the line has been completed.

Seaboard people say the work will be pushed through to completion with all possible speed.

A Columbia, S. C. dispatch says that there are persistent reports in Columbia that the Seaboard Air Line has secured or will secure control of the Columbia, Newberry and Laurens Road, which connects Columbia and Laurens, which connects with the Seaboard Air Line at Clinton. President Childs, of the Columbia, Newberry and Laurens, said that he knew nothing about the rumors and talk and did not know how they started. It is stated that the Seaboard Air Line owns one-third of the Columbia, Newberry and Laurens stock, that another third of the ownership of the line is owned by the Atlantic Coast Line, and that the other third interest is held by Columbia stockholders. It is this Columbia interest, which it is said the Seaboard Air Line has acquired, or at least a majority of it which would give the Seaboard the controlling interest in the property. Some intimation is also made that it is the Atlantic Coast Line and not the Seaboard Air Line which has been watching the Columbia, Newberry and Laurens.

ON THE DIAMOND.

Games Played in This and Adjoining States.

Washington, April 20.—Harvard met her first defeat of the season on Georgetown field today when the some collegians added another to their unbroken series of baseball victories, winning by a score of 6 to 5. The game was closely contested and was a pitchers' battle, Bach, of Georgetown, displaying a steadiness that overcame the brilliant work of Reid for the visitors. Score:

Table with 2 columns: Team and Score. Rows include Georgetown (6-5), Harvard (1-0), Batteries: Bach and Craunston; Reid and Fitz; At Louisville (15-2), At Philadelphia (6-4), At Brooklyn (6-4), At Cincinnati (7-6), At Chicago (20-13), At Washington (3-5), At Boston (21-1), At St. Louis (6-1), At St. Louis (6-10), At Pittsburg (2-6), At New York (3-10), At Baltimore (7-2).

THE A. & N. C. R. R. CASE.

The Supreme Court Will Hear Argument on it Saturday.

The Atlantic and North Carolina Railroad cases (2) were yesterday morning docketed in the Supreme court, and on motion of counsel for the plaintiff, and by consent of counsel for the defendant, they were advanced on the docket and set for hearing at 10 o'clock Saturday morning.

There are two of these cases, but they will be combined into one in the argument, as the facts and points of law are practically the same in each. The title of the cases are:

Atlantic and North Carolina Railroad et al. vs. H. P. Dortch et al. This is to settle the question as to the directorate and State's proxy.

State in re James A. Bryan et al. vs. Dan W. Patrick et al. This is a quo warranto proceeding for the office of presidency of the road.

The point in the controversy as between Mr. Bryan and Mr. Patrick is whether the board of internal improvements had a right to remove the directors of the Atlantic and North Carolina Railroad. The charter of the road, which was in no wise changed in that respect, has always provided that the board of internal improvements might remove directors and appoint new ones as was recently done. The question raised in a number of other cases as to whether the Legislature had the right to take away from the Governor his power to appoint directors jointly with the board of internal improvements is not involved in the case.

The general grounds of the case are that under the act of 1897 the Governor and the board of internal improvements jointly appointed eight directors of the Atlantic and North Carolina Railroad, of whom Mr. Patrick was one. The directors subsequently elected him president of the road, the charter providing that none but a director should be chosen president.

The act of 1899 increased the number of the board of internal improvements from three to nine and vested in the board the sole power to appoint directors of the roads. Acting under the charter powers the board removed the old directors and elected eight new directors, of whom Mr. Bryan was one. The new directors met and chose Mr. Bryan as president of the road.

After his election Mr. Bryan demanded possession of the office from Mr. Patrick, who declined to yield. It has been the invariable custom in the management of the road for each new administration of State affairs to remove the old board and appoint in its place, the old board always quietly submitting. When Hancock was appointed president of the road by Governor Russell and the board in March, 1898, Mr. Chadwick, though his term did not expire until September, made no contest, recognizing the right of the appointing power to remove. The contest therefore involves the dispute by the incumbent of a power that has been exercised without question heretofore.

The attorneys for Bryan are Simmons, Poul and Ward and for Mr. Patrick MacRae & Day and W. C. Douglass. For Patrick; MacRae & Day and J. C. L. Harris.

On Tuesday Judge Hoke heard the case at Chambers in Tarboro and decided it in favor of Bryan and the new directors. Now it is to be finally settled by the Supreme court.

CONSTIPATION, HEADACHE, BILIOUSNESS, HEARTBURN, INDIGESTION, DIZZINESS,

Indicate that your liver is out of order. The best medicine to rouse the liver and cure all these ills, is found in

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25 cents. Sold by all medicine dealers.

WANTED.

Six good men to work in the Singer Sewing Machine business. Apply to

W. E. WILLSON, District Agent, RALEIGH, N. C.

A LILAC TEA AT MRS. TURNER'S.

Her Elegant Home Thronged With Callers to Meet Her Guests.

Yesterday afternoon from 5 to 7 o'clock, at her residence on Hillsboro street, Mrs. J. M. Turner gave an "At Home" to the "older people" complimentary to her guests, Mrs. Knight, of Chicago; Miss Engleman, of Kentucky, and Mrs. Hogshead, of Louisiana.

The Turner house is well adapted to receptions of this kind, having folding doors between hall, parlors and dining room.

The main entrance was decorated with palms and other plants here and there giving a very pleasing effect.

The hostess and her guests received in the east parlor whose decorations were purple lilac and violets. The table was artistically wreathed with smiles. In the centre of the table was a bowl of crimson tulips which glowed under the brilliant lights of the candelabra.

Refreshments were served in the west parlor by the following young ladies: Misses McPheeters, Busbee, Turner, Jones and Misses Ellie and Marion Haywood.

From 8 to 12 o'clock was given to the young people. Soft lights and daintily gowned young women made a lovely scene.

The many friends of Mrs. Knight warmly welcomed her to her old home again where she was once so popular as Miss Helen Fowle.

This reception was only one instance of Mrs. Turner's unflinching effort to render these social gatherings at her home, occasions long to be remembered.

A RALEIGH BOY'S SUCCESS.

Mr. George W. Blacknall Supervises a Big Government Job.

The Waterbury (Conn.) Evening Globe tells of the success of Mr. George W. Blacknall, a native of Raleigh, now residing in Waterbury, Conn. His Raleigh friends will be glad to read it. We quote from the Globe:

"The firm of Randolph & Clowes on Saturday successfully completed a large government order for condenser heads. The castings weigh 3,000 pounds each, the largest ever run in this city, or it is said, in the world. They are 30 inches wide, 48 inches long and 4 inches thick when cast, but each piece is rolled down to 1 1/2 inches in thickness before it is turned over to Uncle Sam. The composition of which the castings are made is 60 per cent. copper and 40 of spelter with a secret alloy. The work was done under the exclusive supervision of George W. Blacknall, master caster, at Randolph & Clowes. Mr. Blacknall has already won an enviable place in the mechanical world, but in the minds of local mechanics the successful completion of the latest Government order is his greatest work up to date.

Substitution

the fraud of the day.

See you get Carter's.

Ask for Carter's.

Insist and demand

Carter's Little Liver Pills.

SPECIAL RATES VIA S. A. L.

Meeting Dentists, Raleigh, N. C., May 1st to 5th.

On account of the State Dentist meeting at Raleigh, May 1st to 5th, the S. A. L. will sell round-trip tickets from all points in North Carolina, including Norfolk and Suffolk, Va., at rate based on tariff two circular A-21. Tickets to be sold April 29th to May 1st, inclusive, limited May 6th for return.

For information call on agents, or the following:

C. H. GATTIS, Up-town Ticket Agent, W. C. KIMBALL, Depot Ticket Agent, H. S. LEARD, Travelling Pass. Agent, Raleigh, N. C.

SALE OF BERTIE COUNTY BONDS.

The Commissioners of Bertie County will offer for sale at public auction, for cash, to the highest bidder, at the Court House door in Windsor, Bertie County, North Carolina, at 12 M., on Monday, May 1st, 1899, 100 bonds of said County, issued in pursuance of an Act of the General Assembly of North Carolina, ratified the 24th day of January, 1899.

Each bond is at the denomination of \$100.00, and the interest on each is payable semi-annually, the first day of July and January. Ten of said bonds will become due July 1st, 1900, and ten of said bonds will become due on the first of each July thereafter until the whole of said bonds are paid.

The bonds bear interest at the rate of four per centum per annum.

Correspondence solicited, April 3, 1899. E. E. ETHERIDGE, Register of Deeds, Bertie County, N. C.

SUMMER LAW SCHOOL, UNIVERSITY OF VIRGINIA.

25th Summer Term, July 1 to Sep. 1, 1899. In mountains and non-material section of Virginia. These courses have proved especially profitable to beginners; ten credits for admission to the bar and to practitioners or other legal systematic instruction or credit.

For catalogue, address H. C. MASON, Charlottesville, Va.

REMEMBER

The Sale of those Choice Houses

IN GREENSBORO

At 2:30 O'clock P. M.

Tuesday, April 25th, 1899.

Terms 1-6th cash; balance one, two, three, four and five years.

Summit Avenue Building Company, GREENSBORO, N. C.

A Perfect Infant Food Gail Borden Eagle Brand Condensed Milk. A PERFECT SUBSTITUTE FOR MOTHERS MILK. FOR 40 YEARS THE LEADING BRAND. INFANT HEALTH SENT FREE. N.Y. CONDENSED MILK CO. NEW YORK.

Co-cel-in NATURE'S GREAT NERVE TONIC. CURES: Nervousness, Neuralgia, Nervous Headache, General Debility, Tired Feelings, Restlessness, Kidney Weakness, Nervous Dyspepsia, Brains, Weariness, Depression, and many other types of nerve weakness. A true remedy for Diseases of the Digestive, Nervous and Generative Systems.

Winkelmann & Brown Drug Co. BALTIMORE, MD., U. S. A. RALEIGH AND AUGUSTA AIR LINE RAILROAD COMPANY. April 6th, 1899. Notice—The special meeting of stockholders of this company held this day, adjourned to meet at the office of the company in Raleigh, N. C., on Thursday, May 11th, next, at 11 o'clock a. m. J. M. SHERWOOD, Secretary.

PEARSON & ASHE, ARCHITECTS, Raleigh, N. C. PEEBLES & SHARPE, Consulting Architects, Norfolk, Va. Plans, Specifications and Competitive Sketches for all classes of work furnished on short notice. David Getaz & Co., ARCHITECTS & BUILDERS, Raleigh, N. C. Represented by F. K. THOMSON, Architect. Office: 102 Fayetteville St.

HOME ENTERTAINMENT Is so large a matter of music that there is very little entertainment at home without a Piano. STIEFF PIANOS. Have solid merit, as attested by the high praise of everyone who has bought a Stieff Piano for the past fifty years. Call and examine our stock or write for Illustrated Catalogue. Baltimore, Washington, 9 N. Liberty St., 521 11th St., N. W.

The Pure Food Question. Is not a new question with us. We have been advocating pure food for more than a dozen years, and we are rejoiced to see others taking it up. We like to see men of science taking hold of it and showing people the necessity of eating Only Pure Food, and demonstrating it by analytical and other scientific tests, and we think that everybody should read Prof. Wither's lecture on this important question. We advocate pure food buying and pure food eating, in the only practical way by buying and selling only that which is pure. Our prices may not always be the lowest, but they are as low as the class of goods we deal in can be bought at. "PURE FOOD IS OUR MOTTO." Thos. Pescud, GROCER. In new quarters—305 Fayetteville St., opposite the postoffice. ICE. Our delivery wagons deliver ice each morning and evening to all regular customers who will get tickets and let us know their names and places half a day in advance. Drivers will sell tickets and ice for cash at same old low prices. We cannot fill orders for small lots promptly unless such orders are given before wagons leave factory. Those wanting small lots quickly, can get them at cellar, under our office, 107 Fayetteville street. Tickets for sale at from 60 cents per 100 pounds down. Ice well packed for shipment at 50 cents per 100 pounds per Express. Raleigh, N. C., April 14, 1899.

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