SUPREME COURT OF TENNESSEE.

Colburn et al. v. Mayor of Chattanooga.

Municipal Law.

Where the authorities of a municipal corporation are proceeding to do an act which is *ultra vires* and which will impose on a taxpayer an unlawful increase of tax, he may file a bill in equity, in his own name, to enjoin the act. The concurrence of the Attorney-General, or other representative of the public, is not indispensable.

In such a case a Court of Equity has power to enjoin the issue of illegal evidences of debt by the corporate officers.

Corporate powers are to be strictly construed, and unless clearly given in the charter or by statute, no authority exists in a municipal corporation to issue scrip or warrants on the treasurer, in the form of promises to pay at a future day, for the purpose of paying the ordinary expenses of the municipality.

This was a bill filed by complainants in behalf of themselves and other taxpayers of the City of Chattanooga, to enjoin the mayor and aldermen from issuing any scrip, treasury warrants, currency note, bill or other evidence of debt, until legal authority should be first obtained for so doing.

The bill alleged that by an Act of the General Assembly of March 20th, 1873, entitled "An Act to provide for the issuance of bonds by the cities," it is provided that in no case shall the authorities of cities, having more than eight thousand and less than twenty thousand inhabitants, issue bonds or other evidences of debt until authorized by a two-thirds vote of the qualified voters of such city, at an election held for that purpose; and when duly authorized so to do, by an election held as aforesaid, such authorities are empowered to issue bonds or evidences of debt not exceeding $100,000 in addition to the debts outstanding at the time of the passage of said Act; that in violation of the said Act the defendants were issuing evidences of debt, consisting of warrants on the treasurer, drawn by the mayor and countersigned by the recorder, currency warrants, due in one and three years, which are promissory notes, having the form and general appearance of bank bills; that the treasury warrants are payable in city scrip; that by this creation of debts the defendant has greatly depreciated the credit of the city, &c., and praying that defendants be required to state the amount of such evidences of debt issued, &c., and be enjoined from further issue without lawful authority.

The defendants, after a motion to dismiss for want of jurisdiction of subject matter and parties, which was overruled by the Court, answered, stating the amount of the city debt; the amount of scrip issued; that they had issued the scrip under the authority of and for the purpose specified in the municipal charter, and to accomplish the objects of their incorporation, and for providing for the payment of the debts and expenses of the city; that upon the coming into office of the present board, they found no money in the treasury and a large outstanding indebtedness, and being deprived by the action of the General Assembly of the State, of the power to enforce the collection of taxes for the years 1874–75, they issued warrants and scrip, believing such a course to be necessary to the maintenance of the city government, and for the best interests of the people; that they have the right to issue warrants upon their treasury, whether they have money therein or not, and the right to issue scrip, and that the credit of the city is depreciated, not by any illegal creation of debt, but by the action of the Legislature suspending the collection of taxes.

The form of the scrip issued was as follows:—

"State of Tennessee [1].

One year after date the Board of Mayor and Aldermen of the city of Chattanooga will pay one dollar to bearer.

Thomas Taylor, Mayor.

"————, Auditor."

And endorsed: "This note is receivable for all taxes and other dues of the city on presentation."

The cause was heard upon the bill, answer and exhibits, and an injunction granted, and defendants appealed to this court.

The opinion of the Court was delivered by

Lea, Special J.—The first question presented by the case for our determination is, had the Chancery Court jurisdiction of the subject and of the municipal conduct of the defendant by bill filed by a taxpayer? It is insisted for the defendants that illegal acts, such as defendants are charged with, affect the whole public, and the public must, by its authorized officers, institute the proceeding to prevent or redress the illegal act, and that therefore the Attorney-General was the proper person to file this bill; and we are referred to the reports of several States thus holding. The better and more universal doctrine is that any taxpayer may bring his bill in equity to prevent the corporate authorities from acting *ultra vires*, where the effect will be to impose on him an unlawful tax, or to increase his burden of taxation: 2 Dillon on Mun. Corp., sect. 731, says: "In this country the right of *property holders* or *taxable inhabitants* to resort to equity to restrain municipal corporations and their officers from transcending their lawful powers, or violating their legal duties in any mode which will injuriously affect the taxpayers, such as making an unauthorized appropriation of the corporate funds, or an illegal disposition of the