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WOOD RIVER TIMES

HAILEY, IDAHO.

WEDNESDAY.....JULY 29, 1891

IT DOES NOT AFFECT THE CASE.

The decision of Judge Stockslager, which is published in full elsewhere in this issue of the TIMES, is perfectly sound and just. Courts are inhibited from doing useless things; and inasmuch as the warrants alleged to be illegal, and which are the basis of the complaint, cannot, as truthfully stated in the complaint and admitted by both sides to the suit, be paid within two years (the County Treasurer even said that it would be nearer four years), there is no immediate need for a permanent order restraining their payment. If at any time there is the slightest danger of the payment of the warrants by the Treasurer, the plaintiff will again apply for a restraining order and insist upon its being granted.

In the meantime all persons are warned of the probable want of legality of the warrants, and if they negotiate them, they do so at their own risk. There can no question of an "innocent purchaser" be raised in this matter. The proceedings in court, aside from the statement on the face of the warrants themselves, being notice to the world.

But it may be asked why, since it is evident that the plaintiffs, from their own showing under oath, could not have been very anxious for the order, did they apply for it? Simply because they chose to bring an injunction suit.

There were two ways open to them to test the legality of the warrants issued by order of the Board of Commissioners. One was by appeal, the other by injunction proceedings.

To appeal would have necessitated the bringing of as many separate suits as there were disputed allowance and disputed warrants.

This would have necessitated the bringing of some 40 suits, and put all parties to the suits to great annoyance and enormous expense. It would also have clogged the docket of the Fourth District Court, and seriously interfered with the prompt transaction of business by that court for years.

The plaintiff therefore concluded to separate the warrants into two classes, one of which was composed of small allowances which seemed of doubtful legality; and the other of larger allowances about the illegality of which he had no doubt. And to attack those allowances, or the acts precedent and subsequent to them. Hence the bringing of an injunction suit, at the least possible expense to all parties concerned.

As already stated, the decision does not affect the case in any particular. The case must come up for hearing next December, on its merits. And this was the object of its initiation.

The temporary restraining order was asked for as a mere matter of form, and because the suit was an injunction proceeding. Counsel for plaintiff said so substantially and repeatedly in court, when he intimated that he did not intend to avail himself of it unless it became necessary. If it had been granted it would have benefited neither side to the case. Its refusal benefits neither side.

JUDGE STOCKSLAGER'S DECISION

On the Motion to Dissolve the Temporary Order Restraining the Payment of Certain County Warrants.

The decision of Judge Stockslager, of the Fourth Judicial District Court, on the motion made in the alleged illegal warrant case, by the self-constituted counsel for the defendants, to dissolve the order temporarily restraining the County Treasurer from paying the warrants alleged to be illegal, was filed last Monday, as stated in the TIMES of that date.

Our available space being then devoted to the series of articles on the grasshopper plague, it was found impossible to publish the decision before; but it is now given in full, as follows:

T. E. Picotte, Plaintiff,
vs.
W. H. Watt, County Treasurer of Alturas county, et al., Defendants.

The plaintiff for himself and other taxpayers of said Alturas county asks the Court to restrain the defendant, Watt, as treasurer aforesaid, from paying certain alleged illegal county warrants allowed by defendants, Florence, Weber and Aiken, as the Board of County Commissioners of said county, and issued by defendant, F. W. Garrett, as the County Auditor and Clerk of the Board of County Commissioners.

The complaint alleges in general terms the inability of Alturas county to pay any of the warrants complained of before two years from time of filing said complaint, but avers that Watt, as Treasurer, threatens to pay said warrants whenever he has money in his hands as Treasurer.

The defendants ask that the restraining order heretofore issued herein be dissolved, and to deny the plaintiff any order in this court, and allege that the motion is made on the papers on file in this court.

They also file a demurrer to the complaint, alleging all the grounds of the Statute therefor.

Courts are warned by all the authors to be extremely careful in granting aid by injunction, and the Supreme Court reports of all the States are full of decisions bearing out the principle that courts of equity will not interfere when any other remedy exists, and unless it is made to appear to the satisfaction of the Court that no other remedy exists, and that the immediate necessity for the relief prayed for exists.

Vol. 1, 2d edition of "High on Injunctions," Sec. 10, says:

"Interlocutory injunctions being often sought for the purpose of harassing and annoying defendants, the utmost care should be observed in the exercise of the jurisdiction, and the relief should only be allowed upon a clear necessity being shown of affording immediate protection to some right or interest of the party complaining, which otherwise would be seriously injured or impaired."

Sec. —, same author and same volume, says:

"And it is incumbent upon the party seeking relief by interlocutory injunction to show some clear legal or equitable rights, and a well grounded apprehension of IMMEDIATE injury to their rights. So it is requisite that a complainant seeking the aid of a court of equity by injunction, shall not have been guilty of laches or delay in the assertion of his rights, for while delay may not amount to proof of acquiescence in the wrong for which he seeks redress, it may yet suffice to prevent his obtaining relief by injunction."

It is hardly necessary to say that the author above referred to is in the lead of all others in questions of equity. Scarcely a Supreme Court decision in any of the States or Territories of the United States can be found wherein equity is involved that he is not referred to.

We do not deem it necessary to pass on any question in this case excepting the motion of the defendant to dissolve the temporary restraining order heretofore issued in this case, and the only question presented by the motion is:

"Does the plaintiff, by his pleading or complaint, bring himself within the law for the interference of the court by injunction?"

We think not, as the rights of the parties thereto can be determined long before it is shown by the complaint that the plaintiff or parties represented by him can suffer by the alleged unlawful acts of the defendants.

The motion to dissolve the restraining order is sustained.

July 25, 1891.

C. O STOCKSLAGER,
District Judge.

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HAILEY, IDAHO, July 28, 1891.

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