

THE LEASE OF THE COUNTY CONVICTS.

Judge Bullock Sustains In Toto Contract Made by County Commissioners.

At their last meeting the board of county commissioners leased the county convicts to Messrs. B. W. Blount & Company for a period of one year. Mr. Walter Ray in the exercise of his right as a taxpayer, sought an injunction from Judge W. S. Bullock restraining the county commissioners from putting this lease into execution claiming that the board had no right to make said lease; that it was against public policy and that the board had not given any notice of their intention and hence put others who might desire to lease the convicts at a disadvantage.

As the case excited a great deal of interest and is a matter of great public concern, we herewith append Judge Bullock's decision, which was delivered Saturday morning at ten o'clock.

This cause came on to be heard on the application for a preliminary injunction, after notice, and the same is argued by Mr. R. A. Burford, solicitor for the complainant, and Mr. Don McMullen and L. W. Duval, solicitors for B. W. Blount, and Messrs. L. N. Green and Hocker & Duval, solicitors for the county commissioners.

The right to maintain the bill is predicated upon the theory that as a citizen and tax payer of the county, the complainant is interested, and that such contract affects him, and has alleged it is a void contract, he has a right to enjoin its execution.

The substance of the assaults made on the validity of the contract is that, for several years prior to the making of the contract, the county commissioners had been working its own convicts on the public roads; that there was no notice of any change of the course of procedure; that the contract is vague and indefinite, and is for a less price than could have been obtained for the convicts, and a less price than the complainant was willing to pay, and as evidence of his good faith he makes an offer, and agrees to pay more, and also not to remove them beyond the limits of Marion county. It is further alleged that the contract, if not void, is voidable, as against public policy, and that the commissioners had no authority to enter into such contract, and by entering into it they have been guilty of such an abuse of the discretion that is vested in them, and the exercise of their discretionary powers, that it amounts to a fraud in law, and that the contract is constructively fraudulent.

The 7th paragraph of the bill sets out the facts that are alleged as making the contract fraudulent and against public policy, which, in substance, are to the effect that there was no notice of the leasing; no place where convicts should be worked; no provision for supervision by the county commissioners; no provision for the humane treatment of the convicts; no precaution against their escape, and the possibility of their discharge remote from their place of residence, or place of conviction, and beyond, possibly, the limits of the county.

It is further alleged that no necessity existed which demanded the making of the lease without notice. It is charged that it is the intention of the board of county commissioners to deliver the convicts, and the injury will be irreparable unless enjoined. The prayer of the bill is for a decree declaring the contract void, and that it be cancelled; that a temporary restraining order issue restraining the delivery of the convicts, and that on final hearing it be made perpetual.

It is sufficient answer to the seventh paragraph of the bill, and the specifications thereunder lettered "A" to "F" inclusive, of the bill to say that the possibility of the doing of the acts alleged in the bill are not shown anywhere that they are not threatened, or will be done, unless the power of the court intervenes to arrest it; and in the absence of such an allegation it seems to me that the bill cannot be considered as constituting a ground for injunction.

The only points necessary to be considered on this application are the allegations, first, that the county commissioners had no authority under the law to lease the convicts; second, that if such power exists, the contract entered into is void, or if not void, at least voidable, against public policy; third, that the making of the lease under the circumstances, such as are alleged in the bill, was such an abuse of the discretionary power of the board as to constitute the act as fraudulent in law.

We will now investigate the law relating to the hire of convicts by county commissioners.

If section 2032 of the Revised Statutes is in force, then it is unnecessary to go further, for it provides: "The said boards (county commissioners) may in their discretion, hire out such prisoners (convicts) upon such terms and conditions as they may think advisable."

The next legislation is chapter 4225, acts of 1895. Section 11 of this act says the county commissioners "are authorized and empowered to hire out,

or otherwise contract for the labor of all county convicts as they may deem advisable; the proceeds of all such contracts to go into the fine and forfeiture fund."

Complainant insists that this section is in violation of the provisions of Article III, Section 16 of the Constitution, which constitutional provision is that each law shall embrace but one subject, and matter properly connected therewith. What is the subject that the legislature is now about to deal with by this act? The subject of legislative action here is the creation of a "fine and forfeiture fund," and the hire of convicts and the proceeds arising therefrom is a matter properly connected therewith, and under the decisions of Florida are not unconstitutional.

Schiller vs. the State, 28 So. Rep., pg. 703.

The complainant says that if this act is unconstitutional it has been repealed by chapter 4769 of the acts of 1899. Section 4 of this act is relied on. It is insisted that unless the convict's sentence is for a year or less, the county commissioners cannot hire him. It would seem that all convicts whose sentence is one year or less must be worked on the county roads, except in cases therein mentioned in the act. It says nothing about a convict whose sentence may be for more than a year. Admitting, for the sake of argument, that the one year and less convicts must work the county roads, the bill in this case relates to all convicts irrespective of the terms of sentence.

There is no general nor special repealing clause in this act, and I am of the opinion that it is not so inconsistent with the Revised Statutes, or the acts of 1895, as to repeal the same.

Both the provisions of the Revised Statutes, section 3032, and the acts of 1895, were before the supreme court on July 20, 1903, in the case of Lang against Walker, 35 So. Rep., pg. 78, and in that cause the court said: "That the county commissioners have the right, and the authority, to employ convicts at hard labor upon the roads of the county. There can be no question of their right under the provisions of section 3032."

Here we have an express declaration in 1903—after all these acts have been passed by the legislature—of the supreme court, declaring the act of 1905 is in full force and effect, and, if it is, then ample authority is found for the county commissioners to hire out the convicts as they see fit.

The next point presented is that the contract is fraudulent in law, and void as against public policy.

To support this allegation it is argued that there was no notice of intention to abandon the former practice by the commissioners to work the convicts themselves, and no notice of their intention to lease, and that the same, under the circumstances, was a gross abuse of their discretion, and amounts to a fraud. I cannot find that the law requires any notice should be given. If the county commissioners have acted injudiciously, or not for the best advantage, then the improvident contract entered into by them, if such it was, cannot be controlled by injunction.

Complainant expressly declares that there is no charge of conspiracy or combination, or any mala fides, on the part of the board, but their acts are a fraud in law. Specifications "A" to "F," inclusive, set out what he charges as acts constituting this fraud. The bill charges many omissions in the contract especially those looking to the humane treatment of the convicts, their comfort, safety and future condition. While it is true that this contract may not be very specific, there is no allegation in the bill that such matters are alleged in these specifications are matters required by law to be done by the county commissioners, or that they should be set out in the contract, or that these possible conditions, and this possible treatment, and these possible escapes, and other matters mentioned, will occur, and that they are threatened; and in the absence of such allegations an injunction will not lie.

Crawford vs. Bradford, 23 Fla. 404.

As to the omission from the contract to provide for the humane treatment, the statutes sufficiently control that, and it is immaterial whether it is written in the contract or not, for it is written in the statute and becomes a part of the contract. The omissions of such provisions from the contract can be of no more effect than if the commissioners had put in the contract that the lessee could work the convicts fifteen hours a day, and on Sundays, too. The law controls these points.

The remaining proposition is that the commissioners were guilty of such abuse of their discretionary power as to constitute the contract fraudulent in law.

The commissioners have, and of necessity must be vested with, very large discretionary power, and in the exercise of these powers, and in the absence of fraud or corruption, or bad faith, the courts cannot control them.

Camp and West vs. McLin, 44 Fla. 519.

They are not a judicial body, but are invested by law with discretionary powers, and when these powers are exercised by them, without fraud or improper conduct, they will not be molested.

In the opinion of the court no sufficient allegation is made that entitles the complainant to a temporary injunction. It is therefore considered and ordered that the application for temporary injunction be, and the same is refused.

Done at chambers in Ocala, Florida, on this 2nd day of September, A. D. 1905.

W. S. Bullock, Judge.

Seed potatoes for fall planting for sale at the Ocala Seed Store. 8 13 6t

THE YOUNG MEN OF OCALA, AND THE DRINK EVIL.

For fear that a false impression has obtained or may obtain concerning the young men of Ocala and the drink evil; with no intention of taking part in the "wet" and "dry" discussion, nor desire to do anything that would aid the former or militate against the latter, but solely for the purpose of putting the young men of Ocala in the light they should properly occupy before the world, these lines are indited.

It is not true, as neighboring cities might be led to believe, on account of the agitation now in force here, that the young men of Ocala are more inclined to be dissipated than is natural to the common run of young men.

On the contrary, the young men of Ocala are noticeably sober and their walk is along very straight and commendable paths.

To make this the more noticeable a few particularities may produce a revelation to those who have not given the subject much thought nor investigation.

Beginning with the Ocala Banner it gives us pleasure to say that the young men in its employment are strictly temperate and commendably industrious in their habits.

Going from our office towards the public square we find Mr. Lee Miller and Mr. William Knight at Standley's are conspicuous examples along the same lines.

Entering the Central National Bank we find a model set of young men, to-wit: Mr. F. L. Watson, Mr. George Ford, Mr. Donald Ford and Mr. James Brooks. All of these young men are strictly temperate and are setting a worthy example to their fellows.

The proprietors of the Variety Store are on the "dry" side of the column, measured by their personal conduct. They know nothing but the Variety Store and are kept busy thinking of schemes to please and benefit their customers.

Mr. E. C. Smith, Mr. Vernie Roberts, Mr. Arthur Masters and all the employees of the Ocala Furniture Company are strangers to the wine that colors the cup.

The Krasnoff Brothers, ex-Mayor Fishel and his sons and others in that block all belong to the temperance side of the column, that is, we mean to say, in their daily habits of life. We don't pretend to know how they will register their votes.

In the great establishment of McIver and MacKay all the employees, from Mr. Parr down, are as straight in the line of temperance as church deacons.

Retracing our steps and proceeding around the square we next enter the Ocala Seed Store, and if Mr. Baxter Carn has ever been guilty of getting his legs in a tangle it has never gotten out on him, and his partner, Mr. S. M. Martin, was never known to wobble in his footsteps, either.

We are pleased to say the same thing of the proprietor and the employees of the T. W. Smith Hardware Company, and the Fair, (their next door neighbors,) and all its employees, belong to the cold water brigade.

Proceeding to Ed's Place, although dispensing these liquid beverages, it is claimed by his friends that the proprietor is an entire stranger to the taste of liquor.

Mr. Weathers, manager of the H. B. Masters store and all his retinue of clerks are so strictly and exemplarily temperate in their lives, that they can all wear, if they are so disposed, the "white ribbon."

Dr. S. H. Blitch, manager of the Commercial Bank and all of his employees, in their daily lives set examples worthy of imitation along the same line.

The Clark Brothers of the O-K Grocery are also models in this respect, as are also the proprietors and employees of the Anti-Monopoly Drug Store.

The proprietor of the Ideal Restaurant, Mr. John R. Martin and Mr. Mallory Liddon of the John R. Martin & Company Livery Stables, and the Pittman & Son Furniture Company are all examples that can be

fittingly named in this connection.

Mr. Harry Clarkson, of the Marion Hardware Company, and every man in his employment, are shining examples along the paths that young men ought to travel.

Kline & Campbell, Capt. George Nash, Messrs. Helvenston & Pasteur, Mr. Biermann, Col. Sid Whaley, Mr. Charlie Rheinauer and all the members of his establishment, the W. J. Chambers Shoe Company and the Boston Store, completing all on that side of the square, can all be named in this connection.

The Teapot Grocery, and the young men engaged in business in the market, and those at the Ocala Steam Laundry, all lead absolutely temperate lives.

This may also be said of Paul Davis, J. W. Troxier, Ditto & Maloney, and Martin & Blake.

The proprietor and employees of the Munroe & Chambliss bank sail in the same boat as does John Williamson, A. E. Burnett, T. B. Snyder, C. L. Anderson, the proprietor and employees of the Postoffice Drug Store, W. W. Condon of the Ocala Music House, and Postmaster Crom and all of his assistants.

Editors Bittinger and Carroll of the Star are "tetotallers" and their printers never know the meaning of "blue Monday."

The Yonge & Cline Company the proprietors and employees and Mr. Huber of the A. C. L. railway and his clerks are all sober, steady and industrious men.

The Ocala fire department are all strictly temperate and the Ocala Rifles composed of a membership of about forty hasn't a "boozer" in its ranks.

With one or two exceptions every lawyer in Ocala are total abstainers; her doctors are entirely so, as are also her dentists and her photographers.

A visit to the court house and city hall will reveal the fact that pure and temperate living are the strong and drawing points of our court, county and municipal officials.

This is true to a man.

We have not mentioned of course all the young men or anything like all of them, but so far as we know, and we have made very diligent inquiry, there is not a single young man in Ocala who is addicted to the "cup."

This is not only remarkable but is a marvelous record and we do not believe that it has its parallel in any other city of its size in this state or in any state of the Union, or, as for that matter, in any city in the civilized world.

This is a very broad statement, but we believe it to be a true one.

Beautiful Women.

Plump cheeks, flushed with the soft glow of health and a pure complexion, make all women beautiful. Take a small dose of Herbine after each meal; it will prevent constipation and help digest what you have eaten. Mrs. Wm. M. Strod, Midlothian, Tex. writes May 31, 1901: "We have used Herbine in our family eight years, and found it the best medicine we used for constipation, bilious fever and malaria. For sale by all druggists."

Strange—Mixon.

Miss Annie Mixon and Mr. T. N. Strange, of Dunnellon, were united in marriage Thursday night August the thirty-first at the home of the bride in the presence of a number of the relatives and a few special friends of the young couple. Rev. A. L. Prisco, of Flemington and McIntosh, officiated. After the ceremony a delightful wedding supper was enjoyed by the guests.

Mr. and Mrs. Strange are at home in Dunnellon, where the groom is a progressive young clerk in one of the leading mercantile establishments in that growing city.

The Ocala Banner extends congratulations to the young couple.

Mr. Charles Gray and his sister, who was before her marriage Miss Mollie Gray, of this city, but now of Tampa, are the guests of Mr. and Mrs. George Close at their beautiful home on Close's Hill.

Buy your binder twine of Marion Hardware Co. Car load just received.

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OCALA, FLA., Oct. 22, 1904.

Messrs. Strauss & Co, Wholesale Whisky Merchants, Ocala, Fla.

Gentlemen.— In accordance with your instructions, I visited [your warehouse on the 19th, instant, and personally selected from your stock a sample of

"Strauss' Royal Reserve"

whisky, the analysis of which shows it to contain:

Alcohol (by weight), per cent.....	36.66
Alcohol (by volume), per cent.....	43.61
Degree proof, per cent.....	87.10
Residue on evaporation, p cent.....	0.660
Ash, per cent.....	0.011
Reducing sugar, per cent.....	0.225
Volatile acids, per cent.....	0.027
Amyl alcohol (fusel oil), per cent.....	0.073

The above results show the whisky to be a carefully blended brand of high grade

and that it has been distilled from a clean, pure grain mash. The amount of fusel oil and of volatile acids is very low.

Respectfully,
F. T. SCHREIBER, Chemist.

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