



There Was Never a Better Time To Build a Home

FOR HOMES, SEE JOHN LINLEY, FARMER & LINLEY'S

There are three special reasons for building just now—

We'd like to talk them over with you.

FRANCHISE CONTRACT IS NOT BINDING UPON CITY

(Continued From Page One.)

under the decisions of our court of highest authority and after a careful and exhaustive examination of our decisions for several weeks, I am compelled to report to you that in my judgment the debt attempted to be created under this franchise contract was under those decisions "in the nature of a bonded debt" and should have been submitted to the voters...

The latest decision was written by Justice Hydrick and was agreed to by Chief Justice Gary and Justice Woods and was decided February 7th, 1912. It is reported in 90 S. C. 352, and in part is as follows, except italics: "February 7, 1912. The opinion of the court was delivered by Mr. Justice Hydrick. The petitioner, who is a citizen and taxpayer of the town of Fountain Inn, seeks to enjoin the town council of said town from making a contract with the Enoree Power company to light the streets and public buildings of said town for a period of ten years."

"It may be conceded that the proposed contract is of the nature of a bonded debt. (Duncan v. Charleston, 80 S. C. 532, 39 S. E. 265) which can not be created without the sanction of a majority of the qualified electors of the town. Constitution, art VIII, sec. 7."

"Moreover, as the making of the contract is the creation of a bonded debt, section 2021 of the Code (vol. 1, Code 1902) also seems to us to be applicable and to confer the necessary authority. That section, as amended by the act of 1908 (25 Stat. 1038), makes it the duty of the authorities of any city or town, upon the petition of a majority of the freeholders, thereof, to order a special election for the purpose of issuing bonds for various purposes enumerated, concluding with the words 'or any corporate purpose set forth in said petition.' It can not be denied that the contract in question is for a corporate purpose which was set forth in the petition."

"Messrs. Chief Justice Gary and Justice Woods took part in this hearing and concur." The case of Duncan vs. Charleston, 80 S. C. 532, referred to above and approved on this point by Justice Hydrick was decided June 20th, 1901. It involved the validity of a Charleston, S. C. franchise contract for 50 years. The city council of Charleston attempted to make it binding on the city of Charleston without an election, etc. By its terms Charleston was to pay a fixed annual sum 50 years for hydrant rentals, etc. The supreme court said this was an attempt to create a "bonded debt" which was beyond the power of the city council. This decision is in part as follows:

"But it is urged by the respondents that the power to create this debt and incur this liability beyond the municipal income of the current year is expressly given to the city of Charleston by the act of 1899 (sec. 3, vol. of Stat. at Large, pages 51 and 52). The respondents also look to the fact that even if this contract did not actually add to the bonded indebtedness of the city of Charleston, that the provision of sec. 7, of art. VIII, of our State constitution, would present an insuperable barrier to the attempt by the general assembly of this State to clothe the city council of Charleston with any such power to pledge or dispose of the municipal income for an indefinite term of years, for it is there provided: 'That this section shall not be construed to prevent the issuing of certificates of indebtedness in anticipation of the collection of taxes for the year when such certificates are issued and payable out of such taxes.' This provision was evidently inserted in this section in order to enable a city council to make some definite provision for current indebtedness which it was intended should be paid from taxes when collected, but in anticipation of the collection of said taxes. Such a scheme would terminate with the year in which the taxes would be collected. It was not intended, nor did it do so, to clothe the city council with power by one contract to pledge \$42,000 of each year's taxes for the period of 50 years next ensuing. The terms of the section are exhaustive of the power. The general assembly could not add to it, for the expression of the constitution whereby a municipal corporation is allowed to issue certificates of indebtedness in advance of the receipt of the taxes to pay such certificates, is a negation of any power in a city government to do more than what is expressly contained in the grant of power heretofore recited, as containing in such section of the constitution. So in the matter of cities and towns, they were not allowed to create a bonded indebtedness beyond eight per cent of the taxable values; yet they, too, were allowed to create an indebtedness in anticipation of the payment of the taxes to be collected during the year such indebtedness for ordinary or current purposes were created. As before remarked, this contract between the Charleston Light and Water company and the city of Charleston is unconstitutional and therefore null and void."

"It seems to me clear under these cases, that the franchise contract between the city of Anderson and the Southern Public Utilities company, attempting as it does to bind the city to pay sums of money for a period of five years and forty years for hydrant rentals, electric lights, etc., is in violation of statute law and unconstitutional because an attempt to create a debt 'in the nature of a bonded debt' without complying with the requirements of the constitution and the statutes. If it is suggested that the Charleston debt of \$42,000 per year for 50 years is much larger than the Anderson debt and therefore distinguishable therefrom, the obvious answer is that the principle was held applicable to a smaller debt than that of Anderson in the Fountain Inn case. The size of the debt could not be controlling. A debt of \$42,000 a year for a large city might not be as serious in proportion to population, taxable property, etc., as a smaller debt to a smaller city. By the Southern Public Utilities company franchise contract the debt attempted to be created even now approximates \$22,000 annually, including that attempted to be created by the 'white way' contract."

"The 'white way' contract of course is invalid for the same reasons that the franchise contract is invalid. It may be contended that it is too late for the city to 'raise' these questions. That by accepting benefits, etc., the city has legally or equitably estopped itself from contesting the validity of the instruments in question. I have carefully considered this view. The doctrine of estoppel is occasionally applicable to what are classed as void contracts but the application of estoppel to void contracts is extraordinary. It is the settled general doctrine in this State that those who deal with a city in matters of this kind do so at their peril. They are presumed to know the law. They are required to investigate and find out whether or not a city council has authority to make contracts of this nature and must accept the consequences if council acts without authority. On this point our supreme court explains this doctrine as applicable to cities in Milater vs. Spartanburg, 68 S. C. page 33, from which I quote as follows:

"It is true, a city may be estopped to deny the validity of acts done by its city council for a public purpose, continuing to accept the benefits of such action, but this is where the act is merely irregular or improper exercise of power conferred by law. Where there is an entire absence of power to do what it has undertaken because the contract or ordinance is forbidden by the constitution or statute law of the State, the council in such action does not represent the municipality, and for this reason the city can not be estopped to deny the validity of the contract or ordinance of the council, whatever may be the loss incurred on those who have acted on the faith of the supposed power, or the incidental benefit which accrues to the residents of the city. The effort to bind the city amounts to no more than if the council had undertaken to legislate or make contracts for another municipality or for the entire State."

"Not Severable. Finally, it may be urged that the franchise contract is severable. That the attempt of the city council to create a debt 'in the nature of a bonded debt' by contract can be and will be separated by the courts from the franchise granting the company the right or 'permit' to occupy the streets, etc., and 'do business' here. In other words, that the courts will declare the franchise portion valid and the contract portion invalid. This phase of the question has also been given my earnest consideration. But I am unable to agree with the severable contention. Among other reasons, because of the plain language of the instruments themselves. It will be recalled by some of you that a strong but unsuccessful effort was made to have the two separated. In fact the original request was for a 'permit to do business' for 60 years without any contract whatsoever as to furnishing water and lights for city purposes and to the inhabitants. This 'permit' proposal was always opposed by council and by many leading advocates of the measure. It is true that there were two papers, one entitled 'An ordinance granting unto Southern Public Utilities company the right and privilege to use the streets and other public places of the city for the purpose of supplying water, electric lights and power to the city of Anderson and its inhabitants' and the other a 'Memorandum of agreement' between the company and city. The latter of course embodies the contract as to hydrant rentals, light, etc. Both papers are of the same date, were passed by council at the same meeting and they in express terms show that the two papers are to be treated and are two mutually dependent parts of a whole to stand or fall together. I find that Section 13 of Part 1, of the 'franchise' part is as follows:

"This franchise or privilege shall be deemed and taken as a part of, and construed in connection with, the written agreement of even date entered into by the parties hereto, prescribing and regulating rates for furnishing water, lights and power to the city of Anderson and its inhabitants by said company."

"I find that the opening paragraph of Part II of the 'contract' part is as follows: 'That for and in consideration of the mutual covenants and agreements hereinafter set forth, the expected performance thereof and other good and valuable considerations, and as a part of the privilege granted by said city to said company to sell and deliver water and electric energy in said city, and of even date herewith, and to be taken and construed in connection therewith, the parties hereto have agreed and do agree with each other as follows, to wit:'

"Recommendations. My instructions do not justify me in recommending to council whether or not it is now wise to disregard the action of the former council. My instructions were to investigate the law and report it as I found it and I have tried to do so without fear, favor or conscious bias for or against the company or the questions involved but I am fully aware that my opposition to the passage of the instruments in their present form, which is a matter of public record, may naturally appeal to many as a sufficient reason to create in me at least an unconscious bias in favor of the position herein outlined. I began this investigation with the deliberate plan of resolving all reasonable doubt in favor of validity. This plan I have tried to follow throughout and if counsel for the company or others have authorities materially antagonistic to my position I shall be glad to see them and examine them. If they prove reasonably decisive of the issues I will cheerfully reverse myself, as the supreme court does occasionally, and in my opinion now, must do again in order to uphold the 'franchise contract' and 'white way contract' as valid and legally binding obligations of this city."

"I make the following recommendations if council decides to take any action as a result of my opinion: 1. That I be authorized to furnish a copy of this opinion to Southern Public Utilities company with an invitation to its attorneys to confer with me and associate counsel with a view to some agreement by which the city and the company may avoid all unnecessary expense, litigation, misunderstanding and confusion, consistent, of course, with a proper protection of the interests of both parties. 2. That, if in my judgment and that of associate counsel, it is wise to do so, I be authorized to propose to the company that the issues be submitted upon an agreed statement of facts. 3. That, subject also to my judgment and that of associate counsel, I be further authorized to propose that the citizens interested be given a reasonable time to present a petition of a majority of the freeholders asking for an election upon the issues, such election of course to be held if such petition be filed within such time. Respectfully submitted, G. CULLEN SULLIVAN, City Attorney, Anderson, S. C., November 9th, 1914.

PALMETTO THEATRE TODAY'S PROGRAM

"SAPHO" "Broncho Billy the Vagabond" "A STUDY IN FEET" Comedy-Vitagraph.

This whole story is interpreted by the feet of the players and it contains a world of fun and no end of amusement.

"TYPOGRAPHICAL ERROR—LOVE AGAINST GOLD" Selig-Alaskan Drama.

"DICK THE POTTERS WIFE" Edison-Drama.

On Saturday the Palmetto will begin showing the Great Seven Reel "America" picture at ten o'clock in the morning; everybody should see this.



with each other as follows, to wit:'

During an entertainment given by the engineer, Dechelette, the former model, Fanny Legrand, comes across the worthy diminutive Provencal Jean Gausson d'Armondy, who is studying law in Paris. Sapho called on Jean from the time at his student's quarters, and after nursing him through a long illness, she succeeds in deciding him to keep her with him. One day the Sculptor, Gaondal, lifted a corner of the veil that hid Sapho's past; this made Jean jealous and Sapho appeared him by the surrender of her old letters.

The initial frail link has been turned into a solid chain that nothing can break. At times Jean is indignant and resentful, but Sapho always gets the better of him.

After some high words with Sapho and on the invitation of his uncle, Coeur, Jean takes a trip to his native home; and he is thought to be saved amidst his family.

soon as he returns Sapho regains her hold on him. At the pressing request of Sapho, Jean adopts a child, in total ignorance that the child is the son of Flamant, condemned for forgery, through his love for Sapho. One day Dr. Boucheron meets Jean in a train and invites him to his house where he meets the doctor's young niece. The young people fall in love with each other and become engaged. Sapho compels him to give up all thoughts of marriage. Recognizing that this life is irrevocably bound with that of Sapho, Jean announces to his family that he is going abroad with his friend. His family reproach and even curse him, especially his father. However he learns that his mistress has received a visit from her former lover, the father of the child, and maddened by jealousy, he insists that Sapho go with him to America. Fortunately for him, it is she who leaves him.

At the pressing request of Sapho, Jean adopts a child, in total ignorance that the child is the son of Flamant, condemned for forgery, through his love for Sapho. One day Dr. Boucheron meets Jean in a train and invites him to his house where he meets the doctor's young niece. The young people fall in love with each other and become engaged. Sapho compels him to give up all thoughts of marriage. Recognizing that this life is irrevocably bound with that of Sapho, Jean announces to his family that he is going abroad with his friend. His family reproach and even curse him, especially his father. However he learns that his mistress has received a visit from her former lover, the father of the child, and maddened by jealousy, he insists that Sapho go with him to America. Fortunately for him, it is she who leaves him.

At the pressing request of Sapho, Jean adopts a child, in total ignorance that the child is the son of Flamant, condemned for forgery, through his love for Sapho. One day Dr. Boucheron meets Jean in a train and invites him to his house where he meets the doctor's young niece. The young people fall in love with each other and become engaged. Sapho compels him to give up all thoughts of marriage. Recognizing that this life is irrevocably bound with that of Sapho, Jean announces to his family that he is going abroad with his friend. His family reproach and even curse him, especially his father. However he learns that his mistress has received a visit from her former lover, the father of the child, and maddened by jealousy, he insists that Sapho go with him to America. Fortunately for him, it is she who leaves him.

THIRTEEN STATES QUARANTINED

Extended to Delaware, New Jersey, Rhode Island and Shipments from Canada.

(By Associated Press.) WASHINGTON, Nov. 9.—Colder weather, with rain was hailed by department of agriculture officials today as a powerful ally in their campaign to repress the rapidly spreading live stock foot and mouth disease epidemic. Encouraging reports came from some sections, but news of more affected districts caused the department to extend the federal quarantine to include Delaware, New Jersey and Rhode Island, and to bar cattle shipments from Canada.

Thirteen States are under quarantine. While no cases of the disease have been found in Canada, the quarantine is to prevent the return of infected cattle cars to the United States. It will stop shipments of cattle into the United States valued at approximately \$3,000,000 a year.

The effect of the Canadian quarantine on the meat situation cannot be estimated immediately, according to department officials; it will depend on whether Canadian imports have been for immediate slaughter or fattening purposes. Reports from Pennsylvania today indicated that the disease had spread.

NO RACE SUICIDE Bregon Kill People Don't Like the Idea.

The good people residing at Bregon, Ill. evidently do not subscribe to the race suicide theory as the record yesterday would seem to indicate. A fine boy was born to Mr. and Mrs. H. Grant, at 103 R. street.

A pretty little girl came to Mr. and Mrs. Will Hightower at 111 P. street. A fine boy came to Mr. and Mrs. A. Cox at 23 R. street.

George W. Perkins, discussing in New York the iniquitous war prices, said: "France, under the heel of an invading army, did not produce her bread, her wheat, her milk or other necessities a single cent. But we! Our food speculators tell us there is good reason for war prices. They say we don't believe them, but they say cynically: 'You can't fool all the people all the time, but there's millions in fooling part of the people part of the time.'"—New York Tribune.

Gallant Major—It's glad I am to see you again, me dear lady; but what was it that was troubling you? Convalescent—I was very, very ill, major through ptomaine poisoning. Major—Dear, dear, now! What with that an delirium tremens you never knew what to eat or drink nowadays. —London Punch.

Women Suffer Terribly From Kidney Trouble.

Around on her feet all day—no wonder a woman has headache, headache, stiff swollen joints, weariness, poor sleep and kidney trouble. Foley Kidney Pills give quick relief for these troubles. They strengthen the kidneys—take away the aches, pain and weariness, weak back and swollen ankles, take away kidney and bladder trouble. Try Foley Kidney Pills and see how much better you feel. Evans Pharmacy.

BIJOU THEATRE

TODAY'S PROGRAM.

The Million Dollar Mystery. Thanxouser. Episode No. 20 entitled "The Secret Warning" is full of thrills and the mystery seems to get deeper than ever. The Black Hundred are trying to recover the papers stolen by Florence in the last installment.

The End of the Alley. Broncho. 3 reel western drama of the mining section.

Vivian's Transformation. Crystal Comedy.

Coming tomorrow "Old Erickson Boss" 3 reel Rex "High Spots on Broadway." Keystone comedy, "Secret Service Sails," Sterling comedy and "The Cripple" Thanxouser.

Coming Thursday "The Tey O'Hearts" No. 2.

Coming Friday "My Lady Raffles in the Mysteries" 3 reel 101 Bison with Grace Cunnard and Frank Ford.

Advertisement for Bi-Jou Theatre featuring "The Secret of a Good Figure" and "Bi-Jou Braxelles".

Personal

Mrs. S. R. Ballard of Burlington, Iowa, and Mrs. I. N. Funk of Bethany, Mo., who have been visiting Capt. and Mrs. R. J. Ramer, have returned to their homes.

Miss Kate Sharpe has returned from Pendleton where she spent the week-end with friends.

Miss Edna Myers has returned from a short visit to relatives at Augusta, Ga.

Miss Carrie McCuen returned yesterday from Due West, where she was pleasantly entertained for the week-end.

G. G. Evans, Jr., of Pendleton spent Sunday in the city with his brothers.

E. L. Martin of the Lebanon section was among the visitors to the city yesterday.

H. P. Martin of Williamston was in the city yesterday for a few hours.

E. F. Wood of Garvin township spent part of yesterday in the city on business.

Mrs. Vashti Keys of Greenville is in the city, the guest of Mrs. S. E. Carter.

W. H. Canfield, a well known business man of Honea Path, was in the city yesterday.

W. K. Garrison of Sandy Springs spent a few hours in the city Sunday with friends.

F. M. Carey of Honea Path was among the visitors to the city yesterday.

Mrs. F. E. Cochran and Mrs. W. E. Swanson have gone to Atlanta, Ga., for a day or two.

Joe Sullivan and Edgar Sullivan spent Sunday in Williamston with friends.

A. P. Spence has returned from a short business trip to Greenville.

Don Rodgers of Williamston was among the visitors to spend yesterday in the city.

William McCown of the Mountain Creek section was in Anderson yesterday.

Mr. and Mrs. T. K. Roper spent a few hours in Spartanburg Sunday with relatives.

Exeter butterfly of the Roberts section was in Anderson yesterday on business.

business.

O. Y. Brownless of Due West was among the visitors to the city yesterday.

John Chastine of Anderson, R. F. D., was in the city yesterday for a few hours.

W. G. Thompson of Charlotte, a well known shoe dealer of that city, spent yesterday in Anderson with his brother.

Alfred Tompkins and George Hill, prominent cotton mill men of Tuckahoe, were in Anderson yesterday.

T. B. Thackston of Greenville spent a few hours in the city yesterday on business.

G. E. Woodruff of Charlotte was among the visitors to spend yesterday in the city.

Dr. J. E. Watson of Iva was in the city yesterday for a few hours on professional business.

Dr. Dodson of Greenville was among the visitors to spend yesterday in the city.

Manley Hutchison, a student at Furman university, Greenville, spent the week-end in the city with his parents, Mr. and Mrs. J. H. Hutchison.

A Glenn Evans has returned from a short visit to Iva.

Mrs. Correne Bowen and Miss Gladys Bowen of Carawell were shopping in the city yesterday.

Dr. I. J. Burris of Starr was among the visitors to the city yesterday.

E. L. Bowie of Iva was in the city yesterday for a few hours.

Ernest McGee of Honea Path was in Anderson yesterday for a short stay.

W. S. Campbell and M. M. Campbell of near Balton were in the city yesterday.

E. M. Ivey of Atlanta, a well known jewelry salesman, was in the city yesterday.

Jule Duckworth of the Lebanon section was in Anderson yesterday on business.

Foley's Honey and Tar Compound for Croup.

Croup scares you. The loud hoarse croupy cough, choking and gasping for breath, labored breathing, call for immediate relief. The very first doses of Foley's Honey and Tar Compound will master the croup. It cuts the thick mucus, clears away the phlegm and opens up and eases the air passages. Harold Berg, Mass., Mich., writes "We give Foley's Honey and Tar to our children for croup and it always acts quickly." Every user is a friend. Evans Pharmacy.

Advertisement for Beautiful Arms and Bracelet Watches by Walter H. Keese & Co.