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IN THE

—❧— Supreme Court of Appeals —❧—

— OF —

WEST VIRGINIA.

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BARNA POWELL, Appellee, vs. THE CITY OF PARKERSBURG, and F. Jenkins, Sergeant. The City of Parkersburg, Appellant.	}	IN EQUITY.
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APPEAL AND SUPERSEDEAS FROM THE CIRCUIT COURT OF WOOD COUNTY

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*Brief of Counsel for Appellant.*

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This is a suit in equity instituted by Barna. Powell, to enjoin the City of Parkersburg from collecting taxes assessed by it for the years 1883 and 1884 against a lot of three acres of land owned by him within the corporate limits of said city as extended by an act of the legislature of West Virginia passed November 5th 1863. (Acts 1863 page 110.) It was provided by said act that the lands so annexed to said city should

be governed by all the provisions of the original charter of said city and amendments thereof except as further provided in said act.

The exceptions so far as are here pertinent are found in sections Three Four and Five of said acts of 1863 and are here given.

“No part or parcel of the land hereby annexed to the said town now used exclusively for gardening, farming, grazing, pasturing or other agricultural purposes, shall be assessed with or liable for any taxes levied for the use of the said town, or the council thereof, unless or until, such part or parcel has been, or shall hereafter be laid off into streets and lots, and such lots have been or shall hereafter be, sold or offered for sale by the owner or owners thereof.

“4. No building now or hereafter erected on the land so annexed to the said town shall be taxed by the said town or the council thereof, unless the same fronts on some street, alley, road or turnpike, by which said building is accessible from the present limits of the said town, but where any building is so situated, the same, and not exceeding one acre of land connected therewith and appropriated to the purposes thereof, or of its occupants, may be assessed according to its value, and the owner or occupier thereof charged with such taxes or levies thereon as may be lawfully imposed by the said council; but the rate of taxation so charged shall not exceed one-half of the rate at the same time charged against similar property within the present limits of the said town.

“5. Whenever the said council shall cause any side walk, or any part thereof, or any street, road or turnpike that is now or may hereafter be opened through any part of the land hereby annexed to the said town, to be graded and the curbstone thereof to be set or placed on one or both sides of such street, road or turnpike, all the land on both sides thereof, so far as the said grading and curbing extends, to the depth, not exceeding two hundred feet, of one tier of lots on either side, may at the next or any subsequent assessment of the property of the said town, be assessed according to its value, and thereafter taxed at the same rate as similar property within the present limits of the said town is or may be taxed.”

The levies by the city complained of were at the *full* rate charged against similar property within the limits of the city prior to the extension, and were assessed on the value as fixed by the state for state and county purposes.

The court below rendered a decree perpetually enjoining the defendant City from collecting the levys complained of.

The defendant City by its demurer to the bill of plaintiff raises two questions and submits that on consideration of the same the bill should have been dismissed.

*First*—That part of the act of November 5, 1863, prescribing an ununiform rate of taxation, or a rate of taxation different from the rate charged against similar property in said City, is in violation of Section 1 of Article 3 of the Constitution of 1863, prescribing equality and uniformity of taxation throughout the State, and is unconstitutional and void.

*Second*.—The exemption from taxation and ununiform rate prescribed by said act is repealed by Section 9 of Article 10 of the constitution of 1872 and by Chapter 141 Acts of 1872-3.

The first question raised involves the application of the general constitutional provision requiring equality and uniformity of taxation to municipal corporations.

That it does so apply is now a well settled doctrine.

The levying of taxes by a public corporation under the authority of State law, is the exercise of the taxing power, as much as the taxation of the Citizens directly for the support of the State Government.

Gilmor vs Sheboygan 2 Black 510.

See also Knowlton vs Supervisors 9 Wis. 410.

As to the unconstitutionality of that part of the act of 1863 prescribing an ununiform rate of taxation, it is submitted there can be no question or doubt.

C & O. R. R. Co. vs. Auditor 19 W. Va. 408.

Knowlton vs Supervisors 9 Wis. 410.

Gilmore vs Sheboygan 2 Black 510.

In the Railroad Co. vs Auditor 19. W. Va. cited, the Supreme Court of this State have rendered an exhaustive opinion on the question raised, relative to exemption from, and ununiformity of taxation, and that opinion of itself is sufficient in the research and learning displayed to dispel all doubts concerning the issue in this case.

If additional authority were needed to satisfy the minds of the court, the decisions of the Supreme Court of the United States in Gilman vs. Sheboygan *ante* and of the Supreme Court of Wisconsin in Knowlton vs Supervisors *ante* are convincing and to the point. It will be seen from a

reading of the two cases cited that the Wisconsin constitution and that of West Virginia are identical in terms relative to the question in issue and the cases are singularly similar to this one.

The legislature of the state had no right arbitrarily to divide up and classify the property of the citizens as is done in this case.

Knowlton vs Supervisors *ante*; see the convincing opinion there given (page 390.)

The ununiform rate prescribed by the act of 1863 is repealed by Section 9 Article 10. of the constitution of 1872 and by chapter 141 acts of 1872-3.

It is submitted that the city of Parkersburg has the right to levy taxes on the property added to it by the act of 1863 at the full rate charged against similar property in the city before extended and that the plaintiffs bill should have been and should be dismissed.

It is not attempted in this brief to enter into an exhaustive argument on the law raised in and applicable to this case for the reason that it is deemed unnecessary in view of the full and convincing opinions of the courts in the cases cited.

T. O. BULLOCK,  
Counsel for Appellant.



