POOR DIRECTOR AN ELECTIVE OFFICE

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we are constrained so to treat this question as not to obliterate from our statute book a large number of acts under which important and costly improvements have been commenced, and rights have been vested. The construction now claimed for this clause of the Constitution, if adopted by this court, would unsettle the business of the state to an extent beyond the capacity of any one to define. That we are not bound to do so is sufficiently clear both upon reason and authority."

Another authority especially applicable in the present case is that In Re, Pottstown borough, 117 Pa., 538, where the subject is fully discussed. The latest case on this question is Rodgers' Appeal, 44 W. N. C., 275.

As already set forth the Act of 1862 is entitled "An Act to authorize the erection of a poor house by the borough of Dunmore," etc. Does not this title give such notice of the subject of the act as would reasonably lead a person interested to an inquiry into the body of the bill? What would he expect to find? It is within common reason that he would expect to find provisions for the erection of buildings, for the election or appointment of poor directors, for the filling of vacancies in the various offices and for many other matters necessary for the government and regulation of a poor house. We are clearly of the opinion that the title is sufficient, and that the supplementary act of 1866, containing a provision in section 2 as to the filling of vacancies, which provision is properly germane to the subject of the original act, is not unconstitutional.

THE POWER TO APPOINT.

The second question to be considered involves the right of the president judge of the court of common pleas of Lackawanna county to appoint a poor director when there is a vacancy. The act of 1862 lodged this power in the court of quarter sessions of Luzerne county. The supplement of 1866 made a change in this particular and authorized the president judge of the common pleas of Luzerne county to fill vacancies. The relator contends that the president judge of the court of Luzerne county should continue to exercise this right, if the supplementary act is constitutional, and that all appointments made by the president judge in our county are void.

This contention is not well founded. A slight examination will show that the proposition is without reason to sustain it. Territory or men once made the objects of legislation, remain subject to the laws imposed, however the manner by which they are designated, may be changed: Parsons vs. Winslow, 1 Grant, 160. When the supplement of 1868 was passed Lackawanna as now territorially constituted, was a part of Luzerne county. The subsequent formation of Lackawanna county did not operate to repeal special laws in force in Luzerne. The changing of the name of the municipality which covered the territory in the new county did not abrogate the laws applicable to this territory: Lackawanna county vs. Stevens, 105 Pa., 465. Whatever the law said must be done by the court or judges of Luzerne county is bound to be done by the courts or judges of Lackawanna county after the formation of the latter county as to matters within its territorial limits. And other conclusion would lead to endless confusion.

Our own court (excepting the writer of this opinion) is on record on this question. It is fully discussed by Gunster, J., in the case of the Appeal of John Gibbons, et. al., Directors, etc., No. 523 April Term, 1893. It therefore appears manifest to us that the president judge of Luzerne county has no power to fill a vacancy in the office of poor director of the Scranton Poor District. It is well known that Judge Rice exercised the power very unwillingly and only by general consent, and with the expectation of remedial legislation relating to the poor district. He finally refused to make any appointments. Since then the appointments have been made by the president judge of our own court, who undoubtedly has the power under the supplement of 1866 to fill all vacancies in the poor board.

INTERPRETATION OF ACT.

The third question relates to the interpretation of the second section of the supplementary Act of 1866. It provides for an appointment to fill any vacancy "whether such vacancy occur by the expiration of the term of office or otherwise." Respondent's counsel claims that this provision wipes out the provision for the election of poor directors by the people of the several districts for regular terms as provided in the original act and substitutes the appointive for the elective system. The supplement of 1866 has a repealing clause. The strongest argument in favor of this position is to be found in the case of Com. ex rel. Snover vs. Stewart, 6 Law Times N. S. 159. It is there decided that the clear intention of the legislature was to abolish the elective system and that no other meaning can be deduced from the words used. We have reached the opposite conclusion and will proceed to give our reasons therefor.

1. The original act provides for the election of poor directors. They are to be elected from certain districts and for stated terms. Numerous provisions are made for the regulation of the elections. The same act, in section three, provides for the filling of vacancies caused by "death, resignation or otherwise." Thus, the act contains legislation, inter alia, on two distinct subjects, to wit, the election of poor directors and the filling of vacancies.

2. The subject of the second section of the supplementary act relates to the filling of vacancies only. The section has no reference whatever to the election of poor directors. It studiously avoids any mention of the word "election." If the intention was to abrogate the elective method the legislature should have said so. A few words to that effect would have been sufficient. It could have enacted that the section providing for the election of poor directors as set forth in the act of 1862 is repealed and that hereafter the directors shall be appointed by the president judge, and then proceed to provide for the filling of vacancies. By the very terms and words of the section, the legislation refers to only one of the subjects contained in the original act and according to a well known rule of interpretation all other subjects are excluded and they cannot be brought in by judicial construction.

VACANCY BY EXPIRATION.

3. A vacancy occurring "by the expiration of the term of office," when the office has been once filled and when the law provides for the election of a successor, is a curious anomaly, and can exist only under certain exceptional conditions. If the framer of the supplement intended by it to abolish the system of electing poor directors, we would characterize the attempt as a clumsy effort to secure legislation by a species of legerdemain. We cannot for a moment believe that the legislature intended any such result. It is reasonable to think that the intention was to substitute one method of filling vacancies for another. As to the meaning of the word "vacancy" we are not without some authority.

The question was very learnedly and elaborately discussed in the case of Walsh vs. Commonwealth, 89 Pa. 426. In that case there was no dispute as to the ordinary signification of the word as applied to an office. An office which had been once filled and became vacant on account of the death or resignation of the incumbent created a vacancy. This was a plain proposition requiring no argument to sustain it. But the supreme court went further and decided that the word "vacancy" "aptly and fitly describes the condition of an office when it is first created and has been filled by no incumbent."

The conditions confronting the court in the Walsh case induced them to extend the legal signification of the term "vacancy" beyond the popular conception of its meaning. In the absence of peculiar conditions the common acceptation of the use of the word must prevail. An office that has an incumbent elected for a regular term, the law providing for the election of his successor, cannot become vacant because of the expiration of the term. There may be a failure to elect at the proper time, or, the director-elect may fail to qualify and a vacancy may exist for these causes, but not merely and specifically because the term has expired.

THE SECOND SECTION.

4. It is our duty now to examine more particularly the phraseology of the second section of the supplementary act of 1866. It is claimed that the purpose was to change the elective system of securing poor directors; and in this connection our attention is called to the fact that by the terms of the supplement the petition for the appointment must be signed by twenty freeholders from the proper district and the appointment must be made at a regular term of court, whereas under the original act the filling of vacancies was not hedged in with these important formalities. This argument has no weight. The appointment of a poor director to fill a vacancy is important enough to require a petition signed by twenty freeholders and it is entirely proper that the appointment shall be made at a regular term of court, so that the people interested in the appointment should have an opportunity to be heard.

Under the Act of 1862 vacancies were filled by the judges of the quarter sessions without petition, at any time, in open court, or in vacation. The safeguards surrounding the filling of vacancies, as provided in the supplement of 1866, cure the defects in the Act of 1862, and are consistent with the construction we place upon the law. Regardless of the object which the framers of the supplement had in view our duty is clear. We must ascertain the meaning of the act from the act itself. When the language of an act is plain and admits of only one meaning, the task of interpretation is easy. "Where the words of a statute are plainly expressive of an intent, not rendered dubious by the contest, the interpretation must conform to and carry out that intent." Bradbury vs. Wagonhorst, 54 Pa. 182.

Judges have no right to mould the language of a statute in order to carry out an unexpressed purpose or to meet an alleged coincidence, nor can they alter the clear meaning of words even if the legislature may not have contemplated the convenience of using them. Looking at the words of the supplement, we find that the vacancies to be filled may occur by expiration of the term of office or otherwise. According to the original act the vacancies would occur "by death, resignation or otherwise." The word "otherwise" in the supplement is broad enough to cover vacancies by death and resignation. It also covers vacancies by removal of the incumbent from the district and by failure of a director-elect to assume the duties of his office.

WHEN A VACANCY EXISTS.

But how can there be a vacancy caused by the expiration of the term? We know of only one way and that is the failure of the electors of any particular district to elect a poor director at the proper time. The term has expired. No successor has been elected. Thereupon the president judge, according to the supplementary act, appoints a director for the full term, or for the unexpired portion of it. The legislature may as well have said that a vacancy could occur by non-election as to say it could occur by expiration of the term. Unless we give the phrase this meaning we would be compelled to hold that the legislature intended to abolish the elective system provided by the Act of 1862, without the use of any words indicating such an intention. Such an alternative would be subversive of all rules of interpretation.

Recapitulating the conclusions we have reached, they are briefly as follows:

1. The supplementary Act of 1866 is constitutional.

2. The president judge of the court of common pleas of Lackawanna is the proper authority to fill vacancies in the poor board.

3. In case there is a vacancy the appointment is for the unexpired part of the whole term of three years, and in case of a failure to elect a poor director, a vacancy exists by reason of the expiration of the term and the appointment is for the full term.

4. The supplementary act does not change or modify the system of electing poor directors provided by the Act of 1862.

5. F. J. Dickert, the respondent in this case, was appointed to fill a vacancy and is therefore rightfully in office until his successor is duly elected or appointed.

The foregoing naturally ends the discussion necessary for the disposition of the present case. But we cannot avoid commenting upon the complications that will surely arise in the future. It is questionable whether under present conditions it is possible to hold a valid election for a poor director in any of the districts described in the Act of 1862. For thirty-three years the poor directors have been appointed and not elected. During this period the lines of election districts and wards have been changed and the integrity of the old poor districts, especially as to the machinery for holding elections for poor directors, has been destroyed to a great extent. A part of a district cannot elect a poor director. Spasmodic attempts have been made to elect a poor director from the old South ward, but as far as we can now see, although the question is not before us, there could not have been a valid election. There has not been in existence for several years for the purpose of an election a political division of territory answering to the district known as the South ward.

LEGISLATION NECESSARY.

It may be that the president judge must continue to exercise the undesirable prerogative of appointing poor directors until new legislation relieves the situation and brings the poor district out of its present chaotic condition. The energies of the parties interested in the solution of this question should be directed to the legislature and not to the courts. We understand that there are now four vacancies in the poor board. These must be filled by appointment in the usual way as the law now stands, because there have been no elections. According to the information filed in this case, Mr. Murphy claims to have been elected from the South ward in 1898.

While we cannot consider this question in these proceedings, nevertheless it is manifest that there could have been no valid election at that time, because the machinery for holding an election in the South ward, even by combining together several of the present wards and election precincts, was not in existence. In addition to this, the proper period for holding an election in that district, if such an election could have been held, was in 1899. These suggestions are made tentatively, and are not to be considered binding on parties now or hereafter interested in poor board matters. Judgment is entered in favor of the defendant. We direct the county to pay the costs. Judge Archbald did not sit in the hearing of this case.

Attorney I. H. Burns, who represents Attorney John J. Murphy, who claims to be the legal director from the South ward of Scranton, said yesterday that he will take an appeal to the supreme court. He takes issue with Judge Edwards' decision that Mr. Dickert is entitled to the office.